

**DOCKETED**

74 C 1030  
OCT - 8 1976

**FILED** CLERK  
H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

OCT - 8 1976

IN THE UNITED STATES DISTRICT COURT FOR THE

H. STUART CUNNINGHAM, CLERK  
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MIDWAY MANUFACTURING COMPANY:

Deposition of

vs.

:

Richard I. Seligman

THE MAGNAVOX COMPANY

:

SECOND DAY

and

:

74 Civ 1657 CBM

SANDERS ASSOCIATES, INC.

:

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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

THE MAGNAVOX COMPANY, et al :

Consolidated Actions

vs.

:

74 C 1030

74 C 2510

BALLY MANUFACTURING  
CORPORATION, et al

:

75 C 3153

75 C 3933  
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Continued deposition taken  
pursuant to a subpoena and notice at the Sanders Associates,  
Inc., Headquarters; Spit Brook Road, Nashua, New Hampshire;  
Thursday, April 8, 1976; commencing at nine-thirty in  
the forenoon.

ERNEST W. NOLIN & ASSOCIATES

General Stenographic Reporters

369 ELGIN AVE., MANCHESTER, N. H. 03104

TELEPHONE: 623-6906

through June 30, 1968. PRESENT: a copy of the document  
that we found relating to For Midway Manufacturing Corporation  
to those two copies Company, Bally Manufacturing Corporation and Empire:

relating to a meeting Fitch, Even, Tabin & Ludeka,  
by Donald L. Welsh, Esq.,  
Meeting in New York 135 South LaSalle Street,  
Chicago, Illinois.

R. Baer, L. Rubin and L. St. John - February 12, 1968.  
For Atari, Inc.:

I have prepared a copy of that memorandum for use.  
Flehr, Hohbach, Test, Albritton &  
Herbert, by Thomas O. Herbert,  
Esq., 160 Sansome Street,  
Mr. Etlinger with residence 15th Floor, San Francisco,  
California.

here, otherwise we will stipulate that it came from  
For Sanders Associates, Inc.,  
the chronological file and Magnavox Company:

of Sanders Associates Theodore W. Anderson, Esq.,  
and James T. Williams, Esq.,  
77 West Washington Street,  
Chicago, Illinois.

Stenotype Reporter: record.)

Ronald J. Hayward

MR. FLANNERY: We will mark  
the document that Mr. MR. ANDERSON: Mr. Flannery,

before you begin, we completed a search of the

Patent Department chronological file last night

(Whereupon, Exhibit No. 60  
and, as I mentioned yesterday, we did find the two

letters that were sent to TelePrompter in this  
(was marked for identification.)

file dated April 9 and April 12, 1968. Our search

covered the chronological file from January 1, '68,

through June 30, 1968, and the only other document that we found relating to TelePrompter in addition to those two copies of letters was a memorandum relating to a meeting. It is entitled "Notes - Meeting in New York with I. Kahn, TelePrompter Corp.; R. Baer, E. Rubin and L. Etlinger - February 19, 1968." I have prepared a copy of that memorandum for your use. If you want to momentarily or briefly recall Mr. Etlinger with respect to it, you may. He is here, otherwise we will stipulate that it came from the chronological file of the Patent Department of Sanders Associates.

1 Q. MR. FLANNERY: Off the record.

A. (Discussion off the record.)  
2 Q.

MR. FLANNERY: We will mark the document that Mr. Anderson handed to me as Exhibit 60.

3 Q. (Whereupon, Exhibit No. 60 was marked for identification.)  
A.

2 MR. FLANNERY: The parties have stipulated that Exhibit 60 was a contemporaneous

Q. memo made by Mr. Etlinger at or about the time of  
 A. the meeting of February 19, 1968, and that in the  
 Mr. Etlinger, if called back to the stand, would  
 have no better recollection than as set forth

Q. in this memo. document relate to?

A. To the reissue application. MR. ANDERSON: Yes, that is

Q. agreed to? office action?

A. I can't recall that. It was a passing glance only.

RICHARD I. SELIGMAN

Q. Did you refer to any other documents? ...  
 called as a witness, having been previously sworn, was

A. I looked at, briefly, at the reissue declaration.  
 further examined and continued his testimony as follows:  
 One of the reissue declarations.

Q. (Interrogatories by Mr. Flannery.)

Q. Mr. Seligman, you realize you are still under oath?

A. Yes. any documents shown to you?

Q. In preparation for your testimony yesterday and

Q. in preparation for your testimony today, did you

A. review any documents? ... that I referred to,

A. I saw a couple of documents. shown to me.

Q. Would you identify those documents? ... were they

A. I believe it was some of the documents in the  
 reissue applications. I am not even sure it is

A. that. I looked at a couple of things very quickly

Q. in one of the files. about those documents?



Q. What file? but I can't. -- there was just some reference

A. In one of the patent files; I think it was in the reissue file, but I can't even recall it. It was

Q. just a quick glance at something.

Q. What did the document relate to?

A. To the reissue application, I believe.

Q. Was it an office action? "EXAM": You mean other

A. I can't recall that. It was a passing glance only.

Q. Did you refer to any other documents? S. In

A. I looked at, briefly, at the reissue declaration.

One of the reissue declarations. Not that I recall.

Q. Anything else? any documents this morning in

A. I don't believe so. testimony?

Q. Were any documents shown to you?

A. Yes. you identify those documents?

Q. Will you identify those documents? of the patents

A. It was the first document that I referred to,

Q. something which was briefly shown to me.

Q. The documents that were shown to you, were they

Q. documents which were of public record in the

A. Patent Office?

A. I believe so. any discussions with Mr. Etlinger

Q. Can you recall anything about those documents?

A. I should, but I can't. There was just some reference made to something in there and I was quickly shown something and that was all that I can recall.

13 Q. And when was this?

A. This was Tuesday.

14 Q. Were you shown any documents yesterday?

A. I think we just saw MR. ANDERSON: You mean other than by you during the testimony?

22 Q. When did he see? MR. FLANNERY: Yes. In preparation for your testimony.

THE WITNESS: Not that I recall.

15 Q. Were you shown any documents this morning in preparation for your testimony?

A. Very briefly.

16 Q. Will you identify those documents?

A. One of the printed copies of one of the patents in suit.

17 Q. Which patent?

A. I think it was the 285 patent.

18 Q. Any other documents?

A. No.

19 Q. Have you had any discussions with Mr. Etlinger concerning or in preparation for your testimony?

A. We have talked, but I wouldn't say that anything that we discussed was in preparation for my speak testimony, or about their testimony.

20 Q. Did Mr. Etlinger discuss his testimony with you?

A. Very briefly, he mentioned one or two things.

21 Q. What did he say to you? FLANNERY: That is why I

A. I think he just mentioned a couple of answers that he gave to a couple of questions. You should have

22 Q. What did he say?

MR. ANDERSON: Well, I object, Counsel, I don't see that this is proper interrogation or relevant material. Well, Mr. Etlinger is a lawyer. Well, MR. FLANNERY: I think it is very relevant, Counselor, in that it may well show a collusion in testimony and I am trying to get that. Mr. Williams.

MR. ANDERSON: I don't understand what you mean by a collusion in testimony, this witness is sworn to tell the truth and tell the truth as he knows it and until you can show that in any way that is not the case, I think this is an improper line of interrogation as I am. He is a lawyer; the fact MR. FLANNERY: Oftentimes, as as

there is an agreement entered into between counsel for the parties that the witnesses will not speak to each other about their testimony. On what grounds?

MR. ANDERSON: We have no such agreement in this case. Attorney-client privilege, and

irrelevant, and I insist. MR. FLANNERY: That is why I want to know what was said.

Q. When did you have them? MR. ANDERSON: You should have?

A. raised this before. Tuesday, yesterday.

Q. And Mr. Etlinger dis? MR. FLANNERY: I am not talking

A. about him speaking to you. a of questions that were asked of him and the MR. ANDERSON: Well, Mr. Etlinger

Q. is a lawyer. Well, I object and I instruct the witness not to answer the questions with regard to any discussions he had with Mr. Etlinger or with me or with Mr. Williams.

Q. Do you take the advice? MR. FLANNERY: I am asking

A. with respect to what Mr. Etlinger told him about his answers during his deposition; I am not asking for any answers to you. abandoned application for

deposition exhibit 31 MR. ANDERSON: Well, I think

Mr. Etlinger, is in the same category as I am. He is a lawyer; the fact that you chose to call him as

a witness does not destroy that fact and I think your questioning is improper.

MR. FLANNERY: On what grounds?

MR. ANDERSON: On the grounds of work product, attorney-client privilege, and irrelevant, and I instruct the witness not to answer.

Q. When did you have the conversation with Mr. Etlinger?

A. I had one Monday, Tuesday, yesterday.

Q. And Mr. Etlinger discussed his testimony with you?

A. He mentioned to me a couple of questions that were asked of him and the answers that he gave.

Q. What were those questions?

MR. ANDERSON: I object to the question and I instruct the witness not to answer.

Q. Do you take the advice of your counsel?

A. I sure do. If there is any question, I will ask it.

MR. FLANNERY: We will mark the file history of the abandoned application as deposition Exhibit 61 and the file history of the

Patent No. 3,728,480 as Exhibit No. 62.

A. Yes. (Whereupon, Exhibits 61 and

Q. And I will refer you 62 were marked from page 13,  
"Only applicant has identification.) new and

Q. Mr. Seligman, I will place before you the file  
history of the abandoned application, Serial  
No. 697,798, which is marked Exhibit 61, and please  
refer to the amendment which was written by you

A. filed in the Patent Office on February 27, 1970,

Q. and page 13 of that amendment. On receivers, what  
are you referring to MR. ANDERSON: I object to the

A. question only in that you seemed to have put a  
premise in it that this witness wrote page 13.

viewer. That would MR. FLANNERY: I think he has  
testified to that yesterday, Counselor.

Q. Now, going down to MR. ANDERSON: With respect  
to this page? the Hermann, et al, teachings, the  
whereas one apprised MR. FLANNERY: About the broad  
whole amendment. If there is any question, I will  
reask it." did you believe that statement to be

accurate when you MR. ANDERSON: Well, the record  
speaks for itself.

Q. Mr. Seligman, did you write this amendment? It is  
a question, not a statement, even though there is

A. Yes.

29 Q. And I will refer you to the statement on page 13, "Only applicant has come up with this new and unobvious use of television receivers by the home viewer. Applicant has conceived and now teaches a totally new idea." Did you believe that statement to be true when you wrote it?

A. Yes.

30 Q. When you referred to television receivers, what are you referring to or what did you refer to?

A. I think that is obvious by the statement itself. It says television receivers used by the home viewer. That would be television receivers in the viewer's home, I assume.

31 Q. Now, going down to the bottom of that page it states, "Given the Hermann, et al, teachings, whereas one apprised to the idea to use the broad ideas to generate movable spots on a television receiver," did you believe that statement to be accurate when you made it?

A. Yes.

MR. ANDERSON: I think it is a question, not a statement, even though there is



no question mark at the end.

32 Q. What did you mean by television receiver in that statement?

MR. ANDERSON: Well, I object

to any questions about what the witness meant in a word or statement that he used in 1970 or

35 Q. thereabouts in any document that he wrote that has

A. been filed. The document speaks for itself and

36 Q. his meaning is quite immaterial to the meaning that the words have and irrelevant to any issue in this lawsuit, correct?

A. Yes. THE WITNESS: I think the words

37 Q. "television receiver" in this case were referring back to particular claims of the application where

A. these words were set out.

33 Q. Did you mean a television receiver as used in the home?

MR. ANDERSON: Would you read

A. Probably. Now, please?

34 Q. Now, turn over to the amendment after final rejection (Thereupon, the previous question was read back which was filed on August 5, 1970, and, first of all, did you write that amendment?)

MR. ANDERSON: Do you know what

page of the file wrapper you are referring to, by

any chance? MR. FLANNERY: Off the record.

(Discussion off the record.)

THE WITNESS: I have the August 5, 1970, amendment.

Q. Did you write that amendment?

A. Yes, I did.

Q. On page 2 of the amendment, there is an indication that you had an interview with the examiners, is that correct?

A. Yes.

Q. Do you recall any other interviews with respect to this application?

A. Interviews with the examiner?

Q. Yes.

MR. ANDERSON: Would you read the question, please?

(Whereupon, the previous

question was read back

by the reporter.)

THE WITNESS: No. of Mr. Murray.

39 Q. This indicates that the interview took place onto  
July 30, 1970, is that correct? Murray at that

A. That is what it indicates. re. Additionally, there

40 Q. Do you have any reason to doubt that?

41 A. No. you bring any documents along to this interview,

Q. Who was present at that interview? Etlinger or you?

A. If this is the only interview which took place, I  
and I haven't gone through the file to see if other

45 Q. ones have taken place; but if this is the only

A. one that took place, I do remember in addition to  
myself, Mr. Baer and Mr. Etlinger being present.

42 Q. What examiners were present?

46 Q. Was it your practice MR. ANDERSON: If you recall.  
a proposed amendment? MR. FLANNERY: That is all

A. we are ever asking him on a question, Mr. Anderson,  
if he recalls. If he doesn't recall, he can't  
answer. tion.

47 Q. Any other documents? THE WITNESS: Certainly the

A. record indicates on the paper that Mr. Stout and

Q. Mr. Murray. as along any proposed claims?

43 Q. Do you recall Mr. Stout and Mr. Murray being there?

48 A. Mr. Stout was the examiner, so certainly he was

there and I have a vague recollection of Mr. Murray.

A. In fact, let's cancel that. It now comes back to me that I had a talk with Mr. Murray at that interview, yes, he was there. Additionally, there were other examiners present.

Q. Did you bring any documents along to this interview, and, by you, I mean Mr. Baer, Mr. Etlinger or you?

A. I have no specific recollection, but certainly I

A. believe that I brought documents.

Q. Do you recall what documents?

A. I can't recall. I certainly would have brought

A. a copy of the application, the office action, perhaps an amendment.

Q. Was it your practice at that time to bring along a proposed amendment?

A. I wouldn't say that, I would say in some cases I do and in some cases I don't, depending upon the

Q. application, the bounce feature?

Q. Any other documents? MR. ALDERSON: Well, I object

A. I don't believe so. The ground that it lacks a

Q. Did you bring along any proposed claims?

A. I don't recall. THE WITNESS: Which bounce

Q. Would your files indicate what documents you

Q. brought along? as bounce feature seen to you?

A. Possibly. I don't recall, looking through them

Q. yesterday, but I wasn't looking for that in

A. particular, so I don't know. they are active ones.

Q. Did you or Mr. Baer or Mr. Etlinger bring anything

A. else along to the interview?

A. Yes. on off the edge of the screen, they are different

Q. What else?

A. We brought along a television set and a game-playing device.

Q. Would you describe the game-playing device?

A. I don't recall which of the ones that are presented in this room was brought to that interview.

Q. Do you recall anything about the device that was brought to the interview?

A. Yes, it was a device for putting spots on a

A. TV, for moving them around.

Q. Did it have the bounce feature?

A. No, it isn't. MR. ANDERSON: Well, I object

Q. to the question on the ground that it lacks a foundation. What do you mean by the bounce feature?

A. application? THE WITNESS: Which bounce

A. feature? it certainly was made clear to him what

Q. Well, what does bounce feature mean to you?

A. Bouncing off players, walls, edges of the screen.

Q. Did it have bounce feature?

A. They are separate features, they are not the same.

Q. How do you distinguish them?

A. Just the way I said, bounce off a player, off a wall or off the edge of the screen, they are different bounce features. I don't remember the exact

Q. All right; did it have the bounce off the player

feature? you recall about the conversation?

A. I believe it did, used the inversion in gear?

Q. Did it have the bounce off the wall feature?

A. I don't believe it did, discussion of the Apparatus.

Q. Did it have the bounce off the edge feature?

A. I don't believe it did, discussed how to go about

Q. So it only had the bounce off the player feature?

A. I think it did, yes. Murray to definite some

Q. Is that a feature disclosed in the application?

A. No, it isn't, relate anything more about the

Q. So you were showing the examiner a device that

A. included a feature that wasn't included in the

Q. application? Murray suggest the language to be

A. Yes, but it certainly was made clear to him what

A. the application covered in that equipment.

64 Q. In that connection, what did you tell the examiner  
examiner? the circuitry in the device that you

A. I am sure we told him what was covered by or what  
we were attempting to cover by this particular  
patent application and we did mention to him that  
there were other patent applications directed to  
other features. I don't remember the exact circuitry  
conversation. Different, we certainly pointed out

65 Q. What do you recall about the conversation?

A. I recall we discussed the invention in general  
without getting into specifics of the claims, of  
that we conducted a demonstration of the apparatus.  
That Mr. Stout agreed, yes, in fact there was an  
invention and then we discussed how to go about

66 Q. claiming that invention, and I believe I had a

A. conversation with Mr. Murray to definitize some

70 Q. claim language which would be allowable, or with

66 Q. And can you relate anything more about the

A. conversation with Examiner Murray? He was very

A. No, I can't deal with it. He was sure that there

67 Q. Did Examiner Murray suggest the language to be  
added to the claims? The hangup was how do we go

A. I don't believe so. This invention in the claims.



68 Q. Did you explain to Examiner Murray and Examiner  
 69 Stout that the circuitry in the device that you  
 70 showed him was different than the circuitry in the  
 71 application which was the 798 application?  
 72 examiners said to me MR. ANDERSON: I object to  
 73 the question as lacking a foundation.

74 THE WITNESS: If the circuitry  
 75 was in fact different, we certainly pointed out

76 to him that what was demonstrated was not or  
 77 included more than what was in this present

78 application. He was well aware of the bounds of

79 the application. I had a very long conversation

80 with him, he was very, very familiar with the

81 application. that strong feeling that I got.

82 Q. That was Examiner Murray? feature?

83 A. Examiner Stout. playing games on a television set.

84 Q. How do you know that he was very familiar with

85 the subject matter of the application?

86 A. By conversations we had with him. He was very

87 much impressed with it. He was sure that there

88 was a real solid invention here and, if I recall

89 correctly, his biggest hangup was how do we go

90 about definitizing this invention in the claims.

71 Q. Did he state in words or effect that it was a

72 Q. solid invention?

A. He was impressed with the invention. As I say,

80 Q. I cannot recall specific things that either of the  
examiners said to me or that I said to them. I just  
recall the generalities of what went on at that  
interview.

72 Q. How do you know he was impressed with the invention?

A. I got that impression. As I say, I can't recall

81 Q. the language. Whether or not the device that

73 Q. You can't recall the language?

A. I know he asked other examiners to take a look at

A. the invention because he thought it was something.

82 Q. It was just that strong feeling that I got.

74 Q. Because it had the bounce feature?

A. No, the idea of playing games on a television set.

75 Q. What game did you show the examiner?

A. I don't recall. relatively lengthy, but I couldn't

76 Q. Was it a game that you utilized the bounce feature?

A. We may have showed him that game among others.

77 Q. You showed him more than one game?

A. I am sure we did.

78 Q. How many games did you show him?

84 A. I don't recall.

79 Q. Do you recall any game?

A. No.

80 Q. Do you recall anything about - do you recall any  
85 of your conversation with respect to telling the

A. examiner that the application was directed to

86 of different circuitry than the circuitry of the  
device that was being shown to him?

A. I can't recall the specifics of our conversation.

81 Q. Do you recall whether or not the device that  
you showed the examiner was the latest form of  
A. the TV game available at Sanders at that time?

83 A. I have no belief in that matter.

82 Q. Did anything else occur at the interview other than  
A. what you have testified to previously?

A. Not that I recall.

83 Q. How long was the interview?

89 A. I'd say it was relatively lengthy, but I couldn't  
put a time limit. It was longer than interviews

90 A. I normally have because of the demonstration,  
because Mr. Stout was showing it to other examiners,  
because of the additional conversation with  
Mr. Murray.

Q. What did Mr. Baer do during the interview?

A. I am sure he ran the demonstration and I would

also believe that he would have commented on the

invention. That, I will ask you to read the second

Q. Do you recall any statements by Mr. Baer?

A. No, nothing at this point and I will ask you if you

Q. Do you recall whether the TV set was a color TV set  
on a black-and-white TV set?

A. I believe it was a black-and-white TV set.

(Whereupon, the second paragraph is being reproduced

Q. Do you recall the names of any of the other  
as follows:)

examiners that were present during the demonstration?

A. No, I don't. The examiner has carefully  
noted the applicant's remarks concerning the

Q. Were they from the same Patent Office group or  
undividedness of converting an oscilloscope-type  
division?

A. I believe so. They were people that had offices  
in a television receiver. The applicant should note  
in the same general area. I have some vague  
that any modern oscilloscope provides means for  
recollection that an examiner of one of the later  
converting the display into a raster-type display.  
cases was there, but it is a very vague recollection.

Q. Mr. Trafton?  
voltage to the Y axis. Further, the Z axis input

A. Mr. Trafton, but I wouldn't swear to that.

Q. Mr. Seligman, I refer you back to the office action  
This is notoriously common, but if the applicant  
of May 26, 1970, and page 2 of that office action  
would like the examiner to cite a reference, then  
and the - - -

the examiner will supply a reference. The conversion

A. May 26? oscilloscope-type display to a raster-type

Q. 1970.ay or the inverse is an obvious design choice."

A. I have it. MR. ANDERSON: Mr. Flannery,

Q. Page 2 of that, I will ask you to read the second paragraph on that page which we will copy into the record at this point and I will ask you if you agreed with the examiner with respect to his statements in that paragraph? text and it could be misleading and has no place in this record which is the (Whereupon, the second paragraph is being reproduced testimony of this witness. as follows:)

MR. FLANNERY: That is the purpose of cross-examination. The examiner has carefully noted the applicant's remarks concerning the can correct the record any time you want to by unobviousness of converting an oscilloscope-type cross-examination. display to a raster display such as the type used in a television receiver. The applicant should note matter of correcting the record. It is structured that any modern oscilloscope provides means for to be misleading with forcing the reporter to converting the display into a raster-type display. reproduce from the document a portion out of This is done by supplying a sawtooth deflection context, that is all. voltage to the Y axis. Further, the Z axis input

Q. Have you read that paragraph, Mr. Seligman, which controls the modulation of the beam intensity. appeared on page 2 of the office action of May 26, 1970, the second paragraph? would like the examiner to cite a reference, then A. Yes. the examiner will supply a reference. The conversion

Q. from an oscilloscope-type display to a raster-type display or the inverse is an obvious design choice."

MR. ANDERSON: Mr. Flannery, I object to the transcribing verbatim of a fragment of an eight-page paper before the proceedings of the Patent Office. The paper in turn being a fragment from the total file wrapper. The fragment is taken out of context and it could be misleading and has no place in this record which is the testimony of this witness. MR. FLANNERY: That is the true purpose of cross-examination, Mr. Anderson. You can correct the record any time you want to by cross-examination. Q. you answer the question without the coaching of your MR. ANDERSON: It is not a matter of correcting the record. It is structured to be misleading with forcing the reporter to reproduce from the document a portion out of context, that is all. can agree that I even made certain

Q. Have you read that paragraph, Mr. Seligman, which appeared on page 2 of the office action of May 26, 1970, the second paragraph? technically A. Yes. rect that this could be done. The remarks

94 Q. Did you agree with the examiner's statements in  
that paragraph?

MR. ANDERSON: I object.

96 Q. Any one in particular?

MR. FLANNERY: The whole

A. paragraph.

97 Q. Yes. THE WITNESS: I will have to

read it a little more carefully.

I don't think that MR. ANDERSON: The first  
statement is, "The examiner has carefully reviewed  
the examiner's remarks," are you asking the witness  
if the examiner carefully noted the examiner's

98 Q. remarks?

95 Q. Mr. Seligman, will you answer the question without

A. the coaching of your counsel?

A. Well, getting to the first statement, my counsel's  
aid is very helpful because he is talking first  
of all about my remarks which I don't recall.  
So I don't know if I can agree that I even made certain

99 Q. of these remarks. Regarding the remarks directed

2. to converting oscilloscopes into raster-type

A. displays, I think the examiner is technically  
correct that this could be done. The remark



concerning converting an oscilloscope-type display

Q. to a raster display or the inverse as obvious  
design choice, I don't know what that means to you

Q. Did you acquiesce in the examiner's rejection as

A. voiced in that paragraph? I would like to say that

A. Did I acquiesce in his rejection? That's relevant

Q. Yes, the invention.

Q. What do you mean by "MR. ANDERSON"? Well, I object;  
I don't think that paragraph contains a rejection.  
I think your question lacks a foundation, is  
misleading, and is actually erroneous. I think it  
isn't a rejection.

Q. Would you acquiesce in the statements made by you  
the examiner? as to the invention?

A. Well, particularly the last sentence of converting  
an oscilloscope to a raster-type display is an

Q. obvious design choice, I don't see how I can

A. acquiesce in that statement. A design choice for  
what? I am not saying that, I am saying that possibly

Q. Is your testimony, then, that you don't know whether

Q. you acquiesced or not? the claims were amended

A. No, I am not saying that, I am saying that possibly  
I would agree that you could convert oscilloscopes

to raster scan displays.

100 Q. Is there anything in the amendment that you filed after that office action which indicates that you were rebutting that statement by the examiner?

A. I will have to read it. I would like to say that I don't see that the statement is that relevant to the invention.

101 Q. What do you mean by that statement?

MR. ANDERSON: If you mean something other than what you said. Are you suggesting, Counsel, that he means something other than what he said?

102 Q. Can you explain that a little further? What do you mean by relevant to the invention?

10 A. Whether you can convert an oscilloscope to a raster scan display has no relevance on this invention.

103 Q. What invention are you referring to?

A. The invention claimed in this application. The amendment has no specific remarks directed to that paragraph.

104 Q. Isn't it true that also the claims were amended to overcome that objection of the examiner by inserting the term "said control unit" and the term

"for synchronizing a television raster scan"and - - -

A. Yes, I do. MR. ANDERSON: I object, are

Q. you reading from some document as you appear to be?

A. Please point out, if you wish the witness to testify

Q. from the document, where you are reading from?

MR. FLANNERY: I am asking

A. for his recollection.

Q. What were they? MR. ANDERSON: Well, he can't

A. even track the reference in the context you framed

it. believed to be irrelevant or relatively irrelevant.

if there is such a THE WITNESS: My independent

recollection doesn't recall any specific amendments

to the claims specifically directed to that particular

particular paragraph of the office action. in

Q. All right; now, I will refer you to page 1 of the

amendment after final rejection. Does that refresh

your recollection that that amendment was made to

Q. overcome the rejection by the examiner that it was

an obvious design choice to substitute a raster

A. scan for an oscilloscope?

A. No, it does not. that would refresh your recollection?

Q. Mr. Seligman, do you have any independent or the

recollection as to the abandonment of the 798

112 Q. application? before you the file history of the

A. Yes, I do. an application which has been marked

107 Q. Was it in fact abandoned?

A. Yes, would suggest that Claim 39 of the continuation

108 Q. Do you know the reasons for abandoning the 798, even  
application?

113 A. Yes, reference is the French Patent No. 1, 180,470?

109 Q. What were they? patent and I remember the 1,180, but

A. A reference came to my knowledge which, although  
I believed to be irrelevant or relatively irrelevant,

114 Q. if there is such a possibility, presented a problem

A. in that the claims or certain ones of the claims

115 Q. of the allowed application read on that reference

A. and so we decided to abandon this application in  
favor of a continuation application to specifically

116 Q. amend the claims so as not to literally read on the

A. reference. believe, was amended.

110 Q. Do you recall what claims literally read on the  
reference? dependent claims?

A. I don't. ing at Claim 31 and I am not really sure

111 Q. Is there anything that would refresh your recollection?

A. I could possibly look at the application for the  
continuation, it might. ear to me, was amended and

112 Q. I will place before you the file history of the  
continuation application which has been marked  
Exhibit 62.

A. That would suggest that Claim 39 of the continuation

116 Q. I am sorry, not 39. Yes, 39 was amended to remove  
the reference.

113 Q. The reference is the French Patent No. 1, 180,470?

119 A. It was a French patent and I remember the 1,180, but

A. I don't remember the last three numbers. Yes, that  
is it.

114 Q. Any other claims? A. Yes, Counselor. His testimony

A. There were other claims that were amended, and the

115 Q. Because of the French reference?

A. Yes. Whether they had to be amended, I wouldn't  
want to say that.

116 Q. What were those claims? A. ANDERSON: I understood

A. Claim 1, I believe, was amended.

117 Q. Any other claims, other than those that are any  
other independent claims?

A. I am looking at Claim 31 and I am not really sure

120 Q. whether it was amended or not. Without comparing

A. it one claim by claim basis, I can't say for know  
sure. Claim 1, it is clear to me, was amended and

Claim 39, it is clear to me, that it was amended.

Q. Possibly Claim 44, but I can't say for sure without

A. making a comparison. Possibly Claim 47, possibly

Q. Claim 48. to the petition withdrawing the file

Q. Was there any other reason for filing the continuation  
and abandoning the parent application? erence, is

A. Any other reason?

Q. Other than to cite that reference?

A. Not that I recall. as of how long prior to the  
date of this petition MR. ANDERSON: I object, that

is not his testimony, Counselor. His testimony

A. was, I think, we can have it reread, to amend the

Q. claims. to correct that you knew about it for a

Q. year and a half prior MR. FLANNERY: So it didn't

A. read upon that reference year and a half prior to

Q. that date? MR. ANDERSON: I understood

Q. that was his testimony.

A. I don't say that MR. FLANNERY: Yes, and cite

Q. the reference. that that could have been in the

Q. file somewhere or like MR. ANDERSON: Two things.

Q. Any other reason? reason in the world that I knew

A. There is nothing else that comes to mind. I know  
a lot of thought was given to this and I can't

think of any other reason. have been done long

121 Q. When did you find out about this French reference?

A. I don't recall the date. fees and everything else.

122 Q. Referring to the petition withdrawing the file history of the parent application, it states in

123 Q. there there was a newly discovered reference, is that correct? connection with the foreign prosecution

A. Yes, the corresponding application in January, 1976?

123 Q. Do you have any idea of how long prior to the filed date of this petition to withdraw that you knew

A. about this reference?

124 A. No, I don't.

124 Q. Isn't it correct that you knew about it for a

125 Q. year and a half prior to that date? sution, do you

A. That I knew about it a year and a half prior to that date?

A. that date?

125 Q. Yes. D.P.E. 2401 refer to the corresponding

A. I don't say that that is a fact. There is always

A. a possibility that that could have been in the

126 Q. file somewhere or like around or something like

that. There is no reason in the world that I knew

A. the contents of that French patent and its Department

relevancy to the application and didn't cite it.



because it certainly would have been done long before this because this caused us no end of grief.

A. We ended up paying issue fees and everything else.

Q. We never would have let the case go this far if we knew the pertinency to this claim reference.

Q. Isn't it a fact that the claim was called to your attention in connection with the foreign prosecution of the corresponding application in January, 1970?

That you examined the French reference and replied

Q. to the office action in April, 1970? at it wasn't

A. In what country? attention at that date as set forth

Q. In Sweden, letter from the Swedish associate?

A. I don't know.

Q. Mrs. Seligman, in your foreign prosecution, do you

A. assign the same I.D. number to the foreign applications?

A. Generally, yes?

Q. Does D. E. 2401 refer to the corresponding application to the patent application 798? away.

A. Yes, that does indicate that the French patent was

Q. I will refer you to a Swedish letter dated December 30, 1969, which has a receipt stamp on it

A. of January 5, 1970, by the Sanders Patent Department;

Q. does that refresh your recollection that at that

time the French patent was called to your attention?

A. The letter refers to the French patent.

Q. So, then, in fact it was called to your attention at that time, which is January, 1970?

MR. ANDERSON: If you recall.

THE WITNESS: A specific recollection I don't have, and even the inference I can't say.

Q. Do you have any reason to believe that it wasn't called to your attention at that date as set forth in that letter from the Swedish associate?

A. On that date?

Q. Yes, shortly after that date.

A. Yes, for a fairly strong reason.

Q. What is that?

A. That generally when I receive office actions, I don't sit and read them before filing them away.

Q. But that does indicate that the French patent was called to the attention of the Sanders Patent Department on January 5, 1970, is that correct?

A. Yes, it is cited in that letter.

Q. And isn't it a fact that in the letter which you

A. replied to the office action which was April 10, 1970, you discussed that French reference and any its applicability to the foreign counterpart of the parent application?

A. Would you repeat the question? It based upon some of the Swedish examiner's comments in his May 26, 1970 letter. (Whereupon, the previous letter. Looking further through the file, I find question was read back that Sanders' Patent Department did not receive a translation of this French patent until by the reporter.)

February of 1971. THE WITNESS: I assume you mean

Q. April 27 of that, that letter refers to a letter

Q. April 27, v 28, 1971, where is that letter?

A. I responded to that official letter and make some comments regarding the French patent. The whole

Q. So, therefore, you knew about the French patent

Q. on April 27, 1970? For the letter and I can't find

A. Yes, in the file either. Mr. Anderson, we would

Q. Why did you wait more than a year, then, to call that to the attention of the Patent Office and

A. petition to withdraw the original application to

Q. the Patent Office stating that it was a newly

A. discovered reference when you knew about it for

about a year? MR. ANDERSON: I will point out

A. Looking through this file on the corresponding Swedish application, apparently I didn't have any specific details of the French patent at the time

Q. of the April 27, 1970, letter; but was merely making some general comments against it based upon some of the Swedish examiner's comments in his May 26, 1970, letter. Looking further through the file, I find that Sanders' Patent Department did not receive a translation of this French patent until the date February of 1971.

Q. Speaking of that, that letter refers to a letter of January 25, 1971, where is that letter?

A. It certainly isn't in chronological order in the file. Do you want me to go through the whole file and see if I can find it?

Q. Well, I am looking for the letter and I can't find it in the file either. Mr. Anderson, we would

A. like you to produce a copy of that letter of

Q. April you made these comments to the Swedish

A. Here it is, without knowing what was in the patent?

Q. May I see it? according to the Swedish examiner's

A. Yes, comments that he made regarding the patent.

Q. Well, you knew enough MR. ANDERSON: I will point out

that it is in the file that you handed the witness.

MR. FLANNERY: Right, it was out of chronological order.

143 Q. Do you have any recollection as to why you waited more than a year and a half to cite it to the U. S. Patent Office?

MR. ANDERSON: Waited more than a year and a half from what?

MR. FLANNERY: From the date he knew of it.

THE WITNESS: As I said, I did not have a translation of that patent until February of 1971 and I filed a petition to withdraw from issue in March, '71, which is no more than a month.

143 Q. But you knew that the patent contained that in April, 1970?

A. I wouldn't say that.

144 Q. Well, you made these comments to the Swedish associate without knowing what was in the patent?

145 A. Probably. Responding to the Swedish examiner's few comments that he made regarding the patent.

Q. Well, you knew enough about the patent to state,

"This patent merely sets forth one of many schemes for placing markers on a cathode ray tube," didn't you not? I believe I was told that at that time.

A. I assume I knew enough of what to respond to that argument. I did not know the details of that patent sufficiently to realize its relevance to the U.S. application and, clearly when I received the translation of that patent, the relevancy became obvious to me and with due speed, we cited it to the Patent Office and withdrew our application from its issue. There was no benefit to Sanders Associates to not file that immediately. We were desirous of getting this case on and it was.

MR. FLANNERY: I will move to strike his latter statements as not responsive and we will mark the letter from Mr. Seligman to the Swedish Associate dated April 27, 1970, as Exhibit 63. If the record accurate, it is not the letter.

(Whereupon, Exhibit 63 was marked for identification.)  
MR. FLANNERY: I will stipulate to that, that it is not the original copy.

Q. Mr. Seligman, I will place before you a document which has been marked Exhibit 63 and I will ask of you which purports to be a letter from you to the

Q. Swedish associate dated April 27, 1970, and I will ask you if you wrote that on or about the date it

A. bears? I believed them true at that date.

Q. Is your recollection MR. ANDERSON: It appears to be a copy of the letter. It is stipulated to for filing a petition to withdraw MR. FLANNERY: Which we are allowed to use, Counselor, nowadays.

A. I have no other recollection MR. ANDERSON: But it isn't the letter as you characterized it. specific recollection that that MR. FLANNERY: I assume it is a true copy from issue.

Q. Did you have any conversation MR. ANDERSON: But it is not the letter that you said it was the parent application from issue MR. FLANNERY: If you want to provide the letter, we will use it.

Q. Do you recall any conversation MR. ANDERSON: I presume the letter is in Sweden, all I want to have is the record accurate, it is not the letter.

MR. FLANNERY: I will stipulate to that, that it is not the original copy, long as you have marked that THE WITNESS: I have no reason to believe that I did not write that on or about the date indicated, April 27, 1970.



Q. Were the statements that you made in this letter true as of the date you wrote the letter?

A. I am sure I believed them true at that date.

Q. Is your recollection refreshed as to any other reasons than you have testified to for filing a petition to withdraw from issue the patent application?

A. I have no other recollection of any other reasons for withdrawing but that. I have a specific

recollection that that was the reason why we withdrew it from issue.

Q. Did you have any conversations with people from Magnavox concerning withdrawing the parent

application from issue?

A. I don't recall any.

Q. Do you recall any correspondence with respect to that?

A. No. Things on it except for page 5 where "Mr. Flannery" was added to receiver; MR. ANDERSON: Mr. Flannery,

A. if you are leaving that subject, I think as long as

Q. you have marked that one letter, it would be appropriate to also mark the request for the translation and the response which you have asked to,

the witness about. It would save time, is that allright with you?

A. ~~That is correct.~~ MR. FLANNERY: You can do it during your cross.

Q. You will notice that your petition to withdraw from issue, Mr. Seligman, was dated March 11, 1971.

Q. Isn't it correct, Mr. Seligman, that that is the exact time that Magnavox entered into an agreement

with Sanders? In fact, it is the exact date?

A. Whether or not that is true or not, I have no specific knowledge without examining documents,

but I do have a specific recollection that one had nothing to do with the other.

Q. Now, referring to the translation of the French

patent and the one that you submitted to the

Patent Office in the continuation application,

you noticed that the translation does not have any markings on it except for page 5 where an "S" was added to receiver; do you know who added that "S"?

A. I can't say for sure.

Q. Well, I will refer you to the Swedish file where the translation is enclosed. The translation that you purportedly received from the Swedish associate,

Q. and you will notice that the "S" has been added in ink?

A. That is correct. I saw that it had to be withdrawn.

Q. Did you add that "S"? Anybody about that?

A. I have a specific recollection of the "S" being

Q. added, but I don't know if I did it personally.

Q. It was added after the translation was received

Q. from the Swedish associate?

A. Yes.

Q. What were the circumstances under which the "S"

A. was added?

A. To correct an error in the translation.

Q. And who determined that that error was there?

A. I don't recall. Mr. Filingan?

Q. Who was it that called it to your attention? to the

A. I don't recall. I just recall it being done. instruct

Q. What happened at the time of the petition to

Q. withdraw from issue that called the French patent to your attention?

A. What called it to my attention? the parent application

Q. Yes, at that time. What were the circumstances

Q. of you paying the final fee on the parent

Q. application and then withdrawing it from issue?

A. I again have no specific recollection, I can only surmise that when I got the translated copy, I saw

Q. its relevancy. I saw that it had to be withdrawn, is that correct?

Q. Did you talk to anybody about that?

A. Yes, was the substance of your conversation with

Q. To whom?

A. Mr. Etlinger. MR. ANDERSON: I object to the

Q. Anybody else? on the grounds of attorney-client privilege

A. Yes. I instruct the witness not to answer.

Q. Who else? conversations did you have with Mr. Baer?

A. Mr. Cesari. I am not even sure that I had any with

Q. Who else? I think we probably discussed it with him.

A. Possibly Mr. Baer, I cannot be sure about that.

Q. What was said to Mr. Etlinger?

A. No. MR. ANDERSON: I object to the

Q. question as a privileged communication and I instruct

A. the witness not to answer.

Q. Was there more than one conversation with, and Mr. Etlinger with respect to the citing of the French patent and withdrawing the parent application from issue? distinct from the French patent?

A. I am sure there was.

Q. How many conversations do you recollect? of that?

A. I really don't have any recollection as to the number. I know it was an important consideration.

Q. How many conversations did you have with Mr. Cesari?

A. I don't recollect that either.

Q. What was the substance of your conversation with

Mr. Cesari?

A. No. MR. ANDERSON: I object to the question on the grounds of attorney-client privilege and I instruct the witness not to answer.

Q. How many conversations did you have with Mr. Baer?

A. As I said, I am not even sure that I had any with him. I think we probably discussed it with him.

Q. You do not recollect at this time any conversations with him?

A. No.

Q. Do you recall conversations with anybody else?

A. No.

Q. Now, referring to the - - - Isn't it a fact, Mr. Seligman, that the Patent Office agreed with your position that some of the claims were not

patentably distinct from the French patent?

A. I don't know.

Q. You don't have any independent recollection of that?

175 A. They allowed our petition to withdraw from issue.

176 Q. For what reason?

A. I assume the reasons - - - I assume without looking

181 Q. at the document, the reasons that we set forth on  
incumbent motion for withdrawal, did Mr. Beer review

177 Q. But you have not independent recollection?

A. No, I don't recall.

178 Q. I refer you to the decision on the petition which  
is in the continuation - in the parent application,

A. I am sorry - which contains an excerpt from a report

182 Q. from the director of Group 230 which he states,

A. "A number of the claims in this application are not  
patentably distinct from French Patent No. 1,180,470."

181 Q. Did you disagree with that statement of the

A. director? or sometimes,

183 Q. And your present recollection MR. ANDERSON: At that time?

recollecting submitting MR. ELANNERY: At that time

A. or now, if you want to take both. Did you agree  
with it at that time? presentation of this application,  
but whether I submit THE WITNESS: I can't recall.

179 Q. Do you agree with it now? collection.

A. I will have to look at the claims and make a amendment  
determination.

- 180 Q. Do you have any recollection of disagreeing with  
181 Q. it?, let's go to the file history of the continuation  
A. No, I don't. which issued as the new patent and.  
182 Q. During the prosecution of the parent application  
and continuation application, did Mr. Baer review  
the amendments that were prepared by you?  
A. I don't recall. evidence," did you write that paper?  
183 Q. Was your practice in 1970 and '69 to submit amendments  
to the inventors for review? on the first page of  
A. I don't believe so. state, "Applicant has discovered  
83 Q. So it would be unusual to submit to the inventor  
for review? whereby the general public may employ the  
A. An amendment? delivers in their homes for other  
84 Q. Yes. viewing telecast material displayed on the  
A. It had been sometimes. you believe that statement  
85 Q. And your present recollection is that you don't  
A. remember submitting any to Mr. Baer?  
A. It is hard to recall. I worked relatively closely  
with Mr. Baer in the prosecution of this application,  
but whether I submitted the final amendment to him  
for review, I have no recollection.  
6 Q. You have no recollection of submitting an amendment  
Q. to him? before you a copy of the Althouse patent which



A. Yes, I have no specific recollection.

187 Q. Now, let's go to the file history of the continuation

A. application which issued as the 480 patent and

I will refer you to the amendment which is entitled -  
not the amendment, but the letter which was filed

191 Q. in the Patent Office on February 2, 1972, entitled  
"Citation of Reference," did you write that paper?

A. Yes.

188 Q. I refer you to the statement on the first page of  
that amendment which state, "Applicant has discovered  
a novel and patentable use for a standard television  
receiver whereby the general public may employ the  
television receivers in their homes for other

19. Q. than viewing telecast material displayed on the  
screens thereof." Did you believe that statement  
to be correct at the time that you made it?

A. Yes.

189 Q. At this time, you only cited the French patent  
to the Patent Office, why didn't you cite the  
Althouse reference to the Patent Office at the  
same time?

A. I have no recollection of Althouse.

190 Q. I place before you a copy of the Althouse patent which

is patent No. 2,847,661 and ask you if that refreshes your recollection as to the Althouse patent?

A. The figure is familiar as is the name Althouse,

Q. the details of that patent are not familiar to me. I indicate to you that you know about the

Q. Isn't it a fact that this was cited in connection

A. with the prosecution of the 284 patent in an action

Q. dated March 29, 1971, which is prior to the date of the citation of references in the continuation application?

A. That may be, I have no personal knowledge where

A. that is cited, but the 284 application was not for the same invention as the present application.

Q. I will refer to you the file history of the Althouse

Q. patent which I have a copy of here.

Examination of References MR. ANDERSON: The file history of the Althouse patent? and you make this

statement. MR. FLANNERY: Of the Rusch patent, the 284 patent, and the office action dated 3-29-71 in which the examiner cited the

Althouse patent No. 2,847,661. Would you have read that office action on or about the date that it was received by Sanders? for that statement,

if you recall? THE WITNESS: Not necessarily.

Q. When would you have read it? ~~regarding of the~~

A. Sometime prior to the amendment being submitted.

Q. The amendment was submitted in July of 1971, would that indicate to you that you knew about the

A. Althouse patent prior to that date?

A. Probably, yes. fact that in the prosecution and

Q. Do you have any recollection now as to why you did not cite the Althouse patent to the examiner

A. in connection with the prosecution of the 480

Q. patent? a fact that the French patent actually

A. I have no specific recollection, I assume I felt it wasn't relevant; but, as I say, I have no specific

A. recollection.

Q. Now, referring to page 4 of the letter entitled

A. "Citation of Reference," there is a discussion of the French patent by you and you make this following

statement, "This index is generated either at a broadcast station or a closed circuit transmitter and the index will be displayed on each of the receivers tuned to the broadcast station or coupled

A. to the closed circuit transmitter." What is the basis in the French patent for that statement,

if you recall?

A. I don't recall. It is my understanding of the French patent.

Q. Is it still your understanding of the French patent?

A. Yes.

Q. And isn't it a fact that in the prosecution and reissue applications, that you gave a different interpretation to the French patent?

A. I have no idea.

Q. Isn't it a fact that the French patent actually obtains sync components from the TV set and is connected to the TV set?

A. What TV set?

Q. That it obtains the sync components from.

A. The French patent generates an index at a broadcast station, it doesn't generate them at the receiving end of the broadcast signal.

Q. You can refer to the translation, Mr. Seligman, do you recall where there is any support for that statement?

A. Well, you are going to have to bear with me, this is going to take a little bit of time.

Q. Now, referring to the MR. ANDERSON: Mr. Flannery, the French patent speaks for itself. I object to having this witness try at this time to give you a present reaction. MR. FLANNERY: Of the continuation application, the one MR. FLANNERY: I am not asking for a present reaction.

MR. ANDERSON: You have already established what his recollections are, that is on the record; now you are asking him to read the patent and give present recollections. The next page of the citation of reference MR. FLANNERY: I am asking him to look at the patent and ask him if it refreshes his recollection, I am not asking him to read the whole thing. generated signals only to said television receiver MR. ANDERSON: My objection stands. You have changed the question. The witness may read the document if you want to take time to see if it refreshes his recollection as to what he thought at that time. thing?

Q. Maybe I can save a little time and ask you a foundation question. Would reading the French patent refresh your recollection?

A. Probably not. go over to the next document that was

Q. Now, referring to the next page of the application - -  
 application which was MR. ANDERSON: Of what file  
 application, Mr. Flannery? ask you if you wrote  
 that amendment? MR. FLANNERY: Of the continuation

A. application, the one we have been discussing for the

Q. last half hour, what you interviewed the examiner  
 again in connection with MR. ANDERSON: The citation  
 of reference on the continuation application? correct?

A. The paper so indicate MR. FLANNERY: Either way. The

Q. next page of the file history or the next page of

A. the citation of reference. section of an interview

Q. There is a statement up at the top which says, it  
 "Applicant's claims 1 and 31 recite: means for

Q. coupling the generated signals only to said

A. television receiver whereby said dots are displayed  
 only upon the screen being viewed by the participant."

Isn't it a fact, Mr. Seligman, that the Althouse  
 patent disclosed that? he was present, so it is

A. Disclosed that specific thing? on.

Q. That statement. other you brought along any

A. I don't recall the Althouse patent enough to say  
 whether that is true or not.

Q. Now, referring over to the next amendment that was

filed by you, amendment A in the continuation application which was filed in the Patent Office in October of 1972, I will ask you if you wrote that amendment?

A. I would say I did.

Q. This indicates that you interviewed the examiner again in connection with prosecution of the subject matter of this application, is that correct?

A. The paper so indicates.

Q. Do you recall that interview?

A. I have a very vague recollection of an interview with Examiner Murray, but I can only guess that it is this interview that is referred to in here.

Q. Who was present at the interview?

A. I have a vague recollection of Mr. Etlinger being present, but again I am not even sure that that

A. is a good recollection. I might be thinking of

Q. another interview where he was present, so it is not a very positive recollection.

Q. Do you recall whether you brought along any

A. documents or things to this interview?

A. No. you normally keep memorandums of what occurs

Q. Do you recall in connection with the prosecution



A. of any of the applications on the TV games, do you  
 Q. recall any other interview other than what you have  
 testified to previously in which you showed the  
 examiner one of the TV games? + tel to TV games?

A. I have no recollection of that. There is a  
 possibility, though. There is a possibility that  
 we did demonstrate it at another interview, but

Q. I can't recall any?

Q. What do you recall about that other demonstration?

A. I don't. It just seems to me that where we  
 demonstrated it at the first interview, we would

A. have done it again, but I don't have a specific

Q. recollection of having done it. the interviews that

Q. Do you recall what was said at this interview in

A. October of 1972 which you referred to in this

Q. amendment A? Have those notes?

A. No, don't believe so. I don't recall seeing them.

Q. As I gather from your testimony, you have no  
 specific recollection of anything that happened  
 at that interview? MR. HANREY: Mr. Anderson,

A. That is correct. Notes been produced for our

Q. Do you normally keep memorandums of what occurs  
 at interviews? MR. ANDERSON: I don't know

A. No, I wouldn't think so.

Q. Did you keep any memorandums of what occurred at any of the interviews in connection with the

prosecution of the patents directed to TV games?

A. If there are such memorandums, they would be in

this room somewhere because everything has been produced, but I don't recall any.

Q. You don't recall any?

A. No.

Q. Do you recall Mr. Ettlinger making any notes during any of the interviews that he was present at?

A. No, I don't.

Q. Did you make any notes at any of the interviews that you were present at?

A. I am sure I did.

Q. Do you still have those notes?

A. I don't believe so. I don't recall seeing them. More often than not after I file an amendment, I probably throw the notes out.

Mr. Anderson.

MR. FLANNERY: Mr. Anderson, have all those notes been produced for our

inspection, if there are any?

MR. ANDERSON: I don't know

of any notes. We have produced everything that is available in connection with these file wrappers or identified them if they are confidential.

221 Q. Then we can assume that if there were any, they were destroyed?

A. If there were any notes, they must have been destroyed and I am sure there must have been some notes to at least reflect the examiner's wishes.

222 Q. When you petitioned to withdraw the parent application from issue, did you get any consideration to the fact that by not allowing the patent application to issue as a patent, the examiner could not cite it as a reference to the 284 and the 285 patent?

223 A. No, sir.

MR. ANDERSON: I object to the question as lacking a foundation and being erroneous in fact and in law.

MR. FLANNERY: You will have to explain that objection to me sometime, Mr. Anderson..

MR. ANDERSON: I will.

223 Q. Mr. Seligman, I show you a copy of Balding No. 3,122,607 and I will ask you when did you become aware of that

patent? expense.

A. I don't recall, a letter dated August 13, 1971.

Q. Do you recall whether or not it was prior to the  
A. issuance of the 480 patent?

A. I don't recall at all, per to the Balding Patent

Q. Do you recall any reason for not citing it to the

A. Patent Office during the application for the

Q. 480 Patent?

A. If I was aware of it prior to the application of

Q. the 480 patent, obviously I didn't see any of  
relevance, patent prior to the date of that

Q. Do you have any recollection? dated August 13,

A. I have no recollection whatsoever.

Q. I will show you a letter from the French associate

Q. in connection with the prosecution of the French  
application which corresponds to the application for  
the 480 patent, a letter dated May 31, 1971, which

A. was received by Sanders on May 17, 1971, and I

Q. will ask you if that refreshes your recollection as  
to when you became aware of the Balding Patent

A. No. 3,122,607?

A. If I submitted a response to this first project  
of novelty report, it was probably prior to submitting

A. that response.

228 Q. I refer you to a letter dated August 13, 1971,

A. and ask you if that is the response?

229 A. It looks like it.

Q. Does that response refer to the Balding Patent  
No. 3,122,607?

A. 3,122,607?

230 Q. Yes.

A. Yes, it does.

231 Q. Does that indicate to you that you were aware of  
the Balding patent prior to the date of that  
letter, which letter had been dated August 13,

1971?

A. Yes, it does.

32 Q. Do you have any recollection of why you didn't  
call it to the attention of the Patent Office during  
the prosecution of the 480 patent?

A. I have no recollection of that patent.

233 Q. When did you first hear of a game entitled  
Space War?

A. Late July, '75.

234 Q. How did you learn about the game entitled Space

A. War?

A. I saw a book which had some reference to it.

Q. Where did you obtain the book from?

A. From Mr. Etlinger.

Q. I will refer you to deposition Exhibit No. 23 of the Samson deposition and ask you if that is a copy of the book that you saw in July of 1975?

A. That looks like it.

Q. What did Mr. Etlinger say to you when he gave you the book?

A. MR. ANDERSON: If you recall.

THE WITNESS: I don't recall his instructions.

Q. Do you recall anything about that discussion?

A. No.

Q. Do you recall Mr. Etlinger telling you to read the book?

A. I have no specific recollection of that.

Q. You mean he just handed you the book and said, here?

A. No, I am sure he gave me some instructions. Whether he said to read it, to look at it, it was obviously

handed to me to look at.

Q. And did you look at it?

A. At some time I did.

242 Q. Do you recall when you looked at it?

A. Maybe a day later, maybe a week later, maybe  
243 two weeks later, but I did look at it.

Q. So would that bring us up to the first of August,  
A. 1975?

A. It could be, it is in that time frame.

244 Q. Did you do any further investigation on - I am  
asking you - did you personally do any further  
investigation on the game called Space War?

A. If you can define what you mean by investigation.  
All right, I will even withdraw that. At some time  
Q. I did some investigation regarding Space War, yes.

245 Q. When was this?

A. At some period in time after receiving the book.  
Some later period of time I believe I asked someone  
if they knew anything about that display that was  
illustrated in the book. I also was asked to, I  
believe in response to a production of documents  
or something like that, to gather all information  
regarding Space War.

246 Q. Who did you ask concerning seeing the display of  
A. Space War shown in the book which has been marked  
Q. Samson deposition Exhibit No. 23? the conversation



A. I think it is John Sauter, I am not sure. may have

Q. Did you talk to anyone else other than John Sauter?

A. Regarding the book?

Q. Regarding Space War, you a tape for a P30-1 which

A. Regarding Space War, yes, for Space War?

Q. Who else? such a tape which is identified with

A. In gathering material, I talked to - well, I have talked to Ted Mairson, Joe Frisbie, Gordon Green. I think someone named Reiner, all of a sudden his first name, I can't remember it. I talked to some technician also whose name I don't recall.

Q. What did Mr. Mairson say in conversation with you concerning Space War? as from someone else?

A. I don't have a specific recollection of exactly

Q. what he said. It is my general recollection that

A. he was familiar with it.

Q. Could you give us a little more about what he

A. said? I recall?

A. I can't recall whether he said he had seen it or

A. played it. He was familiar with it. been presented

Q. Did he say when he saw it or played it?

A. He may have, but I don't recall. I don't recall; how many

Q. Do you recall anything else about the conversation

A. other than that Mr. Mairson said that he may have seen it or played it?

A. No.

Q. Did Mr. Mairson give you a tape for a PDP-1 which tape was the program tape for Space War?

A. We presented such a tape which is identified with the word Space War on it and I can't recollect

Q. whether it was Mr. Mairson or not who gave me that tape. I don't recollect receiving that tape from him. I will ask you if there were any other tapes

Q. Who did you receive the tape from?

A. I believe I got one from Gordon Green.

Q. Did you get other tapes from someone else? obtained?

A. Space War on a PDP-1? Tapes from Gordon Green, one

Q. Yes. John Sauter and possibly one from Matt Keiner.

A. Yes, there were others. his first name finally

Q. How many others?

A. I don't recall. collection is that there were three

Q. One?

A. Well, whatever they are, they have been presented here. think he so testified.

Q. Well, I am asking for your recollection; how many tapes were there? a third, I am unclear.

A. Well, there were a few paper tapes, but I can't

A. recall if they were all for the PDP-1. [unclear] here.

Q. Were they for other computers? [unclear] your conversation

A. Yes. [unclear] I am not sure whether the paper tapes were

A. for other computers or not. [unclear] about obtaining

Q. Well, how many paper tapes were there? [unclear]

A. Two or three, I don't know.

Q. In place before you two paper tapes which have been

A. marked as Sanders Exhibit 3 and Sanders Exhibit 5

and I will ask you if there were any other tapes  
other than those two?

A. I don't recall it. [unclear] Space War games?

Q. Do you recall where those paper tapes were obtained?

A. I remember getting a tape from Gordon Green, one  
from John Sauter and possibly one from Matt Reiner.

I don't recall it now. [unclear] His first name finally [unclear]  
came to me. [unclear] documents or interrogatories, I guess

Q. Your present recollection is that there were three

A. tapes? [unclear] notes of your conversations with

Mr. Hainson?

MR. ANDERSON: I object, I

A. don't think he so testified. [unclear]

Q. Did you keep notes of [unclear] THE WITNESS: [unclear] Just two clearly,  
whether there was a third, I am unclear. [unclear]

266 Q. There may have been a third? Finally, I believe, to

A. If there was a third, it has been presented here.

267 Q. Can you give us the substance of your conversation with Mr. Frisbie?

A. I asked Frisbie what he could do about obtaining documentation which is within Sanders pertaining to Space War.

268 Q. And what did Mr. Frisbie say?

A. It seems to me he was trying to get a little money out of the Patent Department to carry out this investigation.

69 Q. Was he aware of any Space War games?

A. I believe he was.

70 Q. What did he tell you about those Space War games?

A. I don't recall what he told me. I have talked to a number of people in response to the request for production of documents or interrogatories, I guess it was, and --

1 Q. Did you keep notes of your conversations with Mr. Mairson?

A. I did at one time.

2 Q. Did you keep notes on your conversation with Mr. Frisbie?

A. I kept a number of notes originally, I believe, to respond to the interrogatories.

Q. Well, did these notes reflect your conversations

A. with these people? date, but it is somewhere in the

A. To some extent. The notes will reflect generally

Q. response to the question do you have any documentation

A. regarding Space War and questions to try and ascertain who else within Sanders would likely either have

Q. documentation or be familiar with Space War, you that

Q. Did you ask any of these people as to when they first heard of Space War?

A. When they first heard of it, possibly, I am not

C. sure. They also indicate to you that they had these

Q. Did you get any replies to that question? in ties?

A. Yes, they had these tapes earlier, whatever the

Q. What did they say?

A. I am not sure I asked the question, I got replies to the question whether I asked it or not.

Q. What did Mr. Mairson say, if he replied to the where question?

A. I don't recall his specific reply.

Q. What did Mr. Frisbie say? and Green, or at least

A. I can't separate some of these replies, but they

Q. seem to have known about it from the time that they were working at our Bedford facility.

Q. Can you set the date of that work?

A. I don't recall the date, but it is somewhere in the recent past.

Q. Well, the approximate date, 1944, is that right?

A. In that time frame, I guess, maybe even earlier.

Q. Somewhere around that area, I can't recall exactly.

Q. Do those people you talked to indicated to you that they were aware of space war back in the middle

A. Sixties or so.

A. In that time frame, I would say, yes, I would say so.

Q. And they also indicated to you that they had those tapes for the FBI in about the middle sixties?

A. Yes, they had those tapes around, which at the time were... I don't know if they were... I don't know.

Q. Did they also indicate to you that they had those tapes around when the... I don't know.

A. I don't know if they were... I don't know if they were... I don't know.

Q. And when you... I don't know if they were... I don't know.

A. Possibly... I don't know if they were... I don't know.

Q. And if those... I don't know if they were... I don't know.

Q. Who is Mr. Green? thing else about the conversation

A. He is an engineer.

Q. How long has he been with Sanders? at that place of

A. A good number of years; I don't recall when he

Q. started. e of paper that he gave you.

Q. He has been with them from the beginning of the late  
Sixties, at least? by or something that he wrote

A. I don't know. rom a piece of paper. e

Q. Well, was he here in the mid-Sixties when the first  
PDP-1 was received? as Deposition Exhibit #4 which

A. I believe the was. letter from Mr. Keiran to

Q. Could you state for the record what the substance  
of the conversation with Mr. Green concerning the  
Space War was? 3, 1967, and I will ask you if that

A. I asked him if he had any documentation and he

A. said he did. I asked him to supply it to me.

Q. I asked him if he could give me some leads where  
else I could find people who were familiar with

A. Space War and had documentation relating to it. a

Q. What sort of documentation did he give you?

A. He gave me a paper tape, he gave me a sheet of  
paper with instructions or something on it. annery,  
Maybe two sheets of paper. I don't recall what else.



291 Q. Do you recall anything else about the conversation  
292 with Mr. Green?

A. I believe he was of the opinion that that piece of  
paper came with the PDP-1.

293 Q. The piece of paper that he gave you?

A. Not that specific piece of paper necessarily, that  
may have been a copy or something that he wrote  
copying it from a piece of paper.

294 Q. I will hand you a document, a two-page document  
which we will mark as Deposition Exhibit 64 which  
purports to be a letter from Mr. Keiran to

Mr. Matthews dated December 8, 1969, and an  
attachment which appears to be a purchase order  
dated November 3, 1967, and I will ask you if that  
document was given to you by Mr. Green?

A. Mr. Green, not that I recall.

94 Q. You said during your prior testimony Mr. Green  
gave you three or four documents?

A. I said he gave me a tape and I said he gave me a  
document with some instructions on it.

5 Q. I place before you - - -  
MR. ANDERSON: Mr. Flannery,  
personally I can't read the date on the attached

Q. purchase order. And both these documents were

Q. Maybe you could tell us for the record, Mr. Seligman, where you obtained the document from? The document

A. that has been marked Exhibit 64, came from his

A. Well, I am not exactly sure. You are mentioning it coming from Mr. Green, possibly he gave me a copy of it too. I remember getting a copy of this purchase order from Joe Frisbie; now, I might have gotten another copy from someone else, too, but, this purchase order I remember coming from Joe Frisbie.

MR. ANDERSON: Yes, we can

Q. Do you recall where you received a copy of the letter from?

A. It may have been attached to it, but I don't recall. I have seen it before, but I think the record

somewhere will show it. MR. ANDERSON: I guess I don't think it is very critical. MR. WELSH: It doesn't.

THE WITNESS: It doesn't think show it? as to what files it came out of, that is all.

MR. WELSH: No.

THE WITNESS: I can only guess that it too came from Joe Frisbie, but that is a guess on my part. I have just no recollection

298 Q. (By Mr. Flannery) And both these documents were  
299 obtained from the files of Mr. Frisbie, to the  
300 best of your knowledge?

301 A. I got them from him, I assume they came from his  
302 file, but I have no recollection of that.

303 MR. WELSH: Mr. Williams just  
304 reminded me that when these sheets were produced  
305 on March 17, you advised us that you had obtained  
306 them from Mr. Frisbie; may we stipulate to that,  
307 Mr. Anderson?

308 MR. ANDERSON: Yes, we can  
309 stipulate that that is what the witness said on  
310 March 17, 1967.

311 MR. WELSH: May we stipulate  
312 that that is where he got them?

313 MR. ANDERSON: I guess I don't  
314 think it is very critical.

315 MR. FLANNERY: Well, I think  
316 it is critical as to what files it came out of,  
317 that is all.

318 THE WITNESS: The purchase  
319 order was clearly gotten from Frisbie, I have no  
320 doubt about that. I have just no recollection  
321

if this was attached. (Indicating)

Q. You are referring to the letter which was attached to it?

A. Dated December 8.

Q. Now, I will place before you a second document which we will mark as Exhibit 65 and I will ask you if you can identify that document?

A. That looks like the document that I did get from Gordon Green.

Q. What did he say about that document when he gave it to you?

A. I believe he said that either that document or a copy thereof or a document from which this was copied he believed came with the BDP-1 that was purchased in Bedford.

Q. The technician (Whereupon, Exhibits 64 and 65 were marked for identification.)

A. No, not earlier in the day. (Whereupon, the luncheon recess was taken.)

Q. (By Mr. Flannery) Mr. Seligman, I will hand the reporter to mark two magnetic tape reels, one is

identified as Reel No. 820 which we will mark as Exhibit 66 and another reel which is identified as Reel No. 890 which we will identify as Exhibit 67 and I will ask you if you have seen those reels prior to today?

A. Yes.

Q. Where did you see those reels?

A. They were given to me and I produced them here earlier today.

Q. Who gave them to you?

A. Reel No. 890 was given to me by Matt Reiner.

A. Reel No. 820 was given to me by another fellow whose name I don't recall at the present time. I believe we identified it earlier, the source of it.

Q. The technician?

A. No, not earlier in my deposition, but when they were produced.

A. The name Ray Bouleau. MR. WELSH: Mr. Williams, do you have notes of that?

Q. Did you in fact obtain? MR. ANDERSON: Apparently a

A. Mr. Paul Dixon.

Q. And as I gather from MR. FLANNERY: Would you mark

those as Exhibit 66 and 67, please?

(Whereupon, Exhibits 66 and

67 were marked for

identification.)

Q. I place before you three paper tapes which we will identify as Deposition Exhibits 68, 69 and 70 and I will ask you if you have seen those paper tapes prior to today?

A. I believe so.

Q. Where did you see those prior to today?

A. I collected those tapes for production here.

(Whereupon, Exhibits 68,

69 and 70 were marked

for identification.)

Q. I hand you Exhibit 68 and I will ask you where you obtained Exhibit 68?

A. The name Ray Rouleau is written on this tape, I assume I obtained it from him.

Q. Did you in fact obtain a tape from Mr. Rouleau?

A. I believe I did.

Q. And as I gather from your prior testimony, you

obtained these sometime in March of this year?

A. I don't remember the date, but it was in response to the interrogatories that requested this material.

211 Q. When was it, about March of this year?

A. Who knows.

212 Q. Well, it was this year sometime?

A. Surely.

213 Q. I place before you Exhibit 69 and I will ask you who you obtained this tape from?

A. Gordon Green.

214 Q. Whose writing is on the front of these tapes, 68, 69 and 70?

A. Exhibit 68, the name, the writing identifying the name Ray Rouleau, is my writing. I don't know whose writing is the rest of it.

215 Q. Whose writing is on the front of Exhibit 69?

A. I do not know.

216 Q. Whose writing is on the front of Exhibit 70?

A. The name Matt Reiner is my writing. I don't know who wrote the rest of it.

217 Q. Where did you obtain Exhibit 70?

A. I believe Matt Reiner.

218 Q. You indicated in your prior testimony, Mr. Seligman,



that you received a copy of the complete translation of the French patent No. 1,180,270 in February of 1971, did you see a translation of any portion of that French patent prior to receiving the complete translation?

A. I really don't recall unless the office action counsel or the letter from Sweden may have mentioned a portion of it. I don't specifically recall.

Q. Did you translate any of the French patent by yourself?

A. No. I have no recollection of the.

Q. Did you have anyone translate it for you other than the Swedish counsel?

A. I believe someone looked at it and I can't recall who, that is why the correction was made.

Q. I place before you a document which we will mark as Exhibit 71 and I will ask you if you can identify that document?

A. I have seen it before. It looks like something that Mr. Baer wrote.

Q. Do you recall where you saw it previously?

A. The only recollection I have of seeing it was this morning. It is the exhibit 71?

223 Q. You mean when you went through the file during  
your deposition? Identify the file.

A. That is correct. MR. ANDERSON: Well, you are

224 Q. Do you recall when you first saw that document? so

A. No, I don't. If it, is that right?

225 Q. Does it refresh your recollection as to any discussion  
with Mr. Baer concerning the French patent?

A. No specific discussion. MR. FLANNERY: It is a file

226 Q. Any discussion? MR. ANDERSON: That is all right.

A. Well, I am sure that I had a discussion with the  
Mr. Baer, but I have no recollection of the it.

specific discussion nor what we discussed. Right; I

just want the record MR. FLANNERY: Read that back,

please? and will be clear and partly so we can put

in back when you are through.

(Whereupon, the previous

(answer was read back was

by the reporter.) (Location.)

27 Q. Do you recall when you had that discussion? Seligman?

A. No, I identify it any further?

Q. As to whose file it is MR. ANDERSON: Just for the?

A. record, Mr. Flannery, can we make a record of it's.

from what file you removed Exhibit 71?

These papers do not. MR. FLANNERY: May be so I cannot  
Mr. Seligman can identify the file.

Q. Well, I refer you to MR. ANDERSON: Well, you are  
handing him the file from which you removed it so  
he can identify it, is that right?

Q. Does that indicate to MR. FLANNERY: You saw me do  
it.

A. It still doesn't indicate. THE WITNESS: It is a file  
marked D-2401. have just brought that memo back to

the Patent Department. MR. FLANNERY: That is the  
file in which the paper was in when we found it.

appear to be shears. MR. ANDERSON: All right; I  
just want the record to be clear partly so that will  
the record will be clear and partly so we can put  
it back when you are through. Do you recall seeing

Exhibit 72 prior to today? (Whereupon, Exhibit 71 was

A. Yes. (Whereupon, Exhibit 71 was  
marked for identification.)

Q. Can you identify that file any further, Mr. Seligman?  
(Whereupon, Exhibits 72-1

A. Can I identify it any further?  
and 72-2 were marked for

Q. As to whose file it is. Isn't it Mr. Baer's file?  
(Whereupon, Exhibits 72-1 and 72-2 were marked for

A. There are papers in here which are not Mr. Baer's.  
(Whereupon, Exhibits 72-1 and 72-2 were marked for

A. I don't know.

Q. These papers do not belong to Mr. Baer, so I cannot say that it is Mr. Baer's file.

Q. Well, I refer you to one of the documents attached which is a letter from you to Mr. Baer.

A. It is a letter from me to Mr. Baer. 480 patent?

Q. Does that indicate to you that that is Mr. Baer's

Q. file? writing is on that?

A. It still doesn't indicate to me that it was his

Q. file. He may have just brought that memo back to the Patent Department to discuss it. Andoned?

Q. I place before you two sheets of drawings which appear to be sheets of drawings of the French

Q. patent containing writings by someone which we will

A. mark as Exhibits 72-1 and 72-2 which we also

Q. removed from the file D-2401. Do you recall seeing

A. Exhibit 72 prior to today? know how the circuit

A. Yes. and so I identified portions of it.

Q. Do you recall seeing these notes from Mr. Baer

(Whereupon, Exhibits 72-1 which have been marked exhibit 71 during the

and 72-2 were marked for prosecution of the 480 patent?

A. I think I already testified that I don't recall identification.)

Q. When did you first see that? morning, out of

A. I don't know that I haven't. Perhaps I have and

Q. Do you have any idea as to when you first saw it?

A. None at all. From Mr. Seligman?

Q. Was it a year ago, two years ago? No, I don't

A. Well, I would say it was some time ago. enough

Q. Was it during the prosecution of the 480 patent?

A. Possibly. you first heard that Mr. Williams saw a

Q. Whose writing is on that? and during his schooling

A. Mine. in the middle Sixties?

Q. Do you recall if you put that writing on there before the parent application was abandoned?

A. I can't say for sure. I really can't say, period, I just don't know. applications were filed?

Q. You have no recollection?

A. No. you hear about it during the pendency of the

Q. Do you recall why you put that writing on there?

A. I would assume I wanted to know how the circuit worked so I identified portions of it. going to

Q. Do you recall seeing these notes from Mr. Baer

Q. which have been marked Exhibit 71 during the prosecution of the 480 patent? a letter from you

A. I think I already testified that I don't recall seeing them at all until this morning, but I wouldn't say that I haven't. Perhaps I have and

A. perhaps I haven't.

242 Q. Do you read French, Mr. Seligman?

A. And understand it, or just read it? No, I don't

read French. Very little, anyway. Not enough

243 to do anything with a technical subject.

Q. When did you first hear that Mr. Williams saw a

game being played at Stanford during his schooling

at Stanford in the middle Sixties?

A. Well, sometime prior to his deposition, but I don't know how much prior.

44 Q. Did you in fact hear about it at about the time that the reissue applications were filed?

A. I don't believe so.

45 Q. Did you hear about it during the pendency of the reissue applications?

A. I don't think so; I think it was first brought to my attention when I learned that he was going to be deposed.

6 Q. Mr. Seligman, I will place before you a document which purports to be a copy of a letter from you to the Swedish associate dated June 24, 1970, which we will mark as Exhibit 73 and I will ask you if you wrote that on or about the date that it bears?

A. I have no reason to believe that I didn't.

247 Q. Does that letter refer to the foreign counterpart of the 480 application?

A. Yes.

248 Q. Did you believe that the statements that you made in that letter at the time you wrote it were accurate?

A. I am sure I did.

249 Q. I will place before you another document which

purports to be a copy of a letter from you to the German associate dated September 12, 1972, which we will mark as Exhibit 74 and I will ask you if you wrote that on or about the date that it

bears?

A. I would assume I did.

(Whereupon, Exhibits 73 and 74 were marked for identification.)

A. I will assume I did.

50 Q. Your best recollection is that you did?

A. Well, I have no recollection of writing the

letter, but where my signature - what there is of

it - it appears to be my signature and there also appears to be an indication that it was mailed



on such-and-such a date.

51 Q. Does that letter relate to the German counterpart  
of the 480 application?

A. Yes.

252 Q. Are the statements that you made in that letter  
accurate as of the date that you wrote that letter?

A. I would assume so, but do you want me to read the  
letter and find out?

253 Q. Well, would you have written statements in the  
letter if you didn't believe that they were  
accurate?

A. No, not normally.

254 Q. I place before you another document which purports  
to be a copy of a letter written by you to the  
German associate dated January 4, 1973, which we  
will mark as Exhibit 75 and I will ask you if you  
wrote that on or about the date that it bears?

A. I would assume so.

55 Q. Does that letter relate to the foreign German  
counterpart of the 480 application?

A. It appears to.

6 Q. Were the statements that you made in this letter at  
the time that you wrote it, do you believe them to

be accurate? the date that it bears and we will

A. Without reading them, I must assume so.

257 Q. You have no reason to believe that they were  
inaccurate?

262 A. I have no reason to believe anything; I haven't  
seen the statements.

258 Q. Is it your normal practice to write lies in letters?

267 A. No, my normal practice is not to write lies in  
letters.

259 Q. Do you doubt some of the statements that you made  
in some of your letters?

264 A. I cannot say anything unless I read statements.  
I assume that statements that I make in letters  
are truths.

260 Q. Or you wouldn't make them?

A. That is correct.

the memo - strike that. Did you know that  
(Whereupon, Exhibit  
the statements that you made in that memo were  
No. 75 was marked for  
admitted as of the date that you wrote the memo?  
identification.)

A. I believe so.

261 Q. I place before you another letter which purports  
to be a memo from you to Mr. Etlinger dated  
July 6, 1973, and I will ask you if you wrote that  
for identification.)

Q. on or about the date that it bears and we will mark it as Exhibit 76?

A. I would assume that it was written on or about that date.

Q. Do you have any recollection that it wasn't written on that date?

A. No, I don't.

Q. It is your best recollection that it was written as of that date?

A. Yes.

Q. Does this memo which has been marked Exhibit 76 refer to the German counterpart of the application which issued as the 480 patent?

A. Yes.

Q. Are the statements that you make in this memo, were they accurate as of the date that you wrote the memo - strike that. Did you believe that

the statements that you made in that memo were

accurate as of the date that you wrote the memo?

A. I believe so.

(Whereupon, Exhibit No. 77

(Whereupon, Plaintiff's

Exhibit No. 76 was marked  
Does that letter that you wrote refer to the  
for identification.)

66 Q. Do you recall what you meant by the statement,  
 "This possibility was not known at the time this  
 A. application was filed and accordingly no disclosure  
 275 Q. of this effect is in the specification," which  
 appears in Exhibit 76?

A. I read the statement and I understand what it says.

267 Q. Do you have any recollection at this time as to  
 what you meant?

MR. ANDERSON: You mean something  
 else other than what it says?

271 A. MR. FLANNERY: Yes.

THE WITNESS: No, I don't see  
 where it means anything other than what it says.

268 Q. I place before you a document which purports to  
 be a letter from you to your Japanese associate  
 dated January 4, 1974, which we will mark as

A. Exhibit 77 and I will ask you if you wrote that

Q. on or about the date that it bears?

A. I believe so.

A. Yes, it does.

(Whereupon, Exhibit No. 77

Q. is placed before the witness and the statements that you made  
 was marked for identification.)  
 in that letter were accurate as of the date that

69 Q. Does that letter that you wrote refer to the

A. Japanese counterpart to the application which issued as the 480 patent?

A. Yes.

270 Q. Did you believe that the statements that you made in that letter were accurate as of the date of the letter?

A. That the statements were accurate as of the date

A. of the letter? I would say that I believed that those statements were accurate, not necessarily

271 Q. that they were accurate. Is of the conception of

271 Q. I place before you another document which purports to be a letter from - a copy of a letter from you to the German associate, your German associate, though dated January 8, 1975, which we will mark as Exhibit 78 and I will ask you if you wrote that letter on or about the date that it bears?

A. I would assume so, yes.

272 Q. Does that letter refer to the German counterpart of the application which issued as the 480 patent?

A. Yes, it does.

273 Q. Did you believe that the statements that you made in that letter were accurate as of the date that you wrote the letter?

A. I would assume so.

(Whereupon, Exhibit No. 78

to. Do you mean a hit spot as used in the patents  
was marked for

Q. What is your understanding of  
identification.)

A. I assumed you meant a hit spot as used in the

Q. What was your first knowledge of the use of the

hit spot in a TV game?

A. I don't recall whether it was the receipt of a

A. disclosure or seeing the demonstration.

Q. Did you have any knowledge of the conception of

A. the use of a hit spot in a TV game?

Q. How do you know that? MR. ANDERSON: I object to the  
question. I didn't object to the last one, although  
I should have on the ground of a lack of a

Q. foundation and a clear identification of what you

A. mean by hit spot. Do you mean in the context of

Q. one of the patents in issue in this case?

A. MR. FLANNERY: The witness  
doesn't seem to be having any problem, Mr. Anderson.

A. I don't understand that. MR. ANDERSON: Well, that  
doesn't mean that you should generate an ambiguous  
record of the use of a hit spot in a TV game?

A. MR. FLANNERY: I am not

generating an ambiguous record.

MR. ANDERSON: You are trying

to. Do you mean a hit spot as used in the patents?

Q. What is your understanding?

A. I assumed you meant a hit spot as used in the patents.

Q. Do you have any knowledge of the conception of the use of a hit spot in a TV game?

A. Yes.

Q. What was your knowledge?

A. That it was conceived by William Rusch.

Q. How do you know that?

A. Because I had many discussions with him and I have seen his notebooks.

Q. Were you present at the conception?

A. No.

Q. Are you one of the witnesses to the conception?

A. Witnesses to conception?

Q. Yes.

A. I don't understand the question.

Q. Well, were you one of the witnesses to the original conception of the use of a hit spot in a TV game?

A. Did I sign notebook pages or disclosures or that



Q. sort of thing? the disclosure that you recall

Q. Yes, sir?

A.. I don't know. I may have signed a page or two, but I don't recall. There were very few people

Q. involved in this project and from them I illustrated the fact that Bill Rusch in fact was the inventor

A. in this area. It is very clear.

Q. I place before you a document which has been marked 9-197 through 9-223 and I will ask you if

Q. that is the disclosure that you first saw in connection with the use of a hit spot in a TV

A. game? certainly saw that the first time in the file.

A. Well, I have seen this. I have some vague recollection of something preceding this, I am not sure if it was maybe a handwriting version of

A. this or something.

Q.. I place before you a document which has been marked Exhibit 9-130 through 9-173 and ask you if that is the document you are referring to as the

A. handwritten disclosure?

A. I have seen that also.

Q.. Which did you see first?

A. I couldn't say; I just don't know.

288 Q. But these are the disclosures that you recall  
seeing?

A. They are very familiar, again I am hindered by the  
fact that - - -

289 Q. When did you first see a device - - - I am sorry,  
hindered by what?

A. Well, the fact that I have seen all these previously  
during depositions of Mr. Rusch, it is hard to  
disassociate those events from earlier events.

290 Q. Maybe if you would look through your file, you can  
determine which disclosure you saw.

A. I certainly saw this one that is in the file,  
but I have no reason to believe that I didn't also  
see the earlier one.

291 Q. The earlier one is not in your file?

A. I don't see it here.

292 Q. I place before you Exhibit 46 which appears to be  
a copy of the document which is in your file,  
is that correct?

A. Without comparing it page to page, I would say so.  
The front page looks that way.

93 Q. Did you also see the device constructed with the  
hit spot?

A. I have seen a device with a hit spot. could you

94 Q. Did you see the device prior to writing the application?

(Whereupon, the previous  
MR. ANDERSON: What application?

question was read back  
MR. FLANNERY: On the hit spot.  
by the reporter.)

THE WITNESS: I can't say for

sure. If the device was built at that time, which  
Inbelieve it was, I would have seen it because the  
game was demonstrated to me.

295 Q. Did the device have wall bounce? was required, it was obvious.

MR. ANDERSON: I object to the question as lacking a foundation. What do you

A. mean by wall bounce? the basic invention?

296 Q. Do you know what wall bounce is?

A. If you are referring to the bouncing of a display <sup>of</sup> <sup>the</sup> <sup>subject</sup> image fixed in position, if that is wall bounce; <sup>did it have wall bounce?</sup> <sup>(Whereupon, a recess</sup> <sup>was taken.)</sup>

97 Q. Yes.

92 A. I don't think so, but I am not sure.

98 Q. Did you make any investigation as to whether or not the use of - the conception of the use of a hit spot in a TV game came after the date of invention of the subject matter of the 480 patent?

MR. ANDERSON: I would you read the question, please?

Q. Do you recall doing anything at all to determine (Whereupon, the previous who was the inventor of the subject matter of the question was read back 284 application? by the reporter.)

A. In this instance, I think it was very clear that Mr. Busch was the inventor. THE WITNESS: Did I make any investigation? circuitry used in developing this

Q. Yes, circuitry.

A. I don't think any investigation was required, it was obvious. circuitry.

Q. That it did come after? from your investigation that

A. The hit spot, after the basic invention? circuitry?

Q. Yes, all parties concerned agreed that that clearly

A. Yes, clearly, his concept.

Q. Did all parties concerned agree that he was also (Whereupon, a recess the inventor of a hit spot in a TV game was taken.)

A. I believe so. I think the two were done.

Q. Who determined the inventorship of the subject matter of the 284 application?

Q. The use of

MR. ANDERSON: I object to a wall bounce TV game.

the question as vague and ambiguous and lacking

a foundation. It is asking for an opinion. Are you

asking his present counsel, THE WITNESS: I would assume Mr. Etlinger or myself.

03 Q. Do you recall doing anything at all to determine who was the inventor of the subject matter of the 284 application?

A. In this instance, I think it was very clear that Mr. Rusch was the inventor because of the distinctive circuitry used in developing this invention.

04 Q. What distinctive circuitry?

A. The slicer circuits.

05 Q. And you determined that from your investigation that he was the one who designed those slicer circuits?

A. Yes, all parties concerned agreed that that clearly was his design, his concept.

06 Q. Did all parties concerned agree that he was also the inventor of a hit spot in a TV game?

A. I believe so. I think the two were done simultaneously.

07 Q. Was Mr. Rusch also the inventor of the use of a wall bounce TV game?

Q. MR. ANDERSON: I object to the question, it is asking for an opinion. Are you

asking his present opinion, what he thought at that time, what the facts show or what?

MR. FLANNERY: What he thought when he made his investigation. We agreed earlier

MR. ANDERSON: You want to know what he thought at that time? There is no

MR. FLANNERY: Yes. Once in this

Normally in this type of testimony, you are not really interested in what he thinks about it today, but what he thought at that time.

MR. ANDERSON: I agree, but there seems to be some attempt to interrogate the witness in an unusual manner as well as others in the case.

THE WITNESS: It is my belief that wall bounce isn't the subject matter of the 284 application.

Q. Did Mr. Busch ever indicate to you that he thought it was the subject matter of the 284 application?

A. Not that I can recall.

Q. I place before you a document which has been marked Exhibit 41, which is a letter from Mr. Busch to Mr. Etlinger dated July 9, 1973, which states,

"The display even incorporates wall bounce as exhibited in our patent 3,659,284."

MR. ANDERSON: I object to the question as lacking a foundation. We agreed earlier that you were referring to the terms as they were used in the patent specifications. There is no foundation for what you mean by wall bounce in this question.

MR. FLANNERY: I am using what the inventor thought was wall bounce.

MR. ANDERSON: You are asking this witness to say what the inventor thought when he was referring to wall bounce or are you asking the witness some other question?

MR. FLANNERY: I am asking the question I asked him.

MR. ANDERSON: You just said you asked him what the inventor thought and I object. The inventor has testified and this witness is not qualified to testify about what the inventor thought.

MR. FLANNERY: Would you read back that question?

meant what we have. MR. ANDERSON: And the  
 application.

Q. Well, could you... MR. FLANNERY: I don't want  
 A. that. Read back my question and insert it at this  
 C. point.

A. I believe so. MR. ANDERSON: And insert his  
 C. modification also.  
 MR. FLANNERY: No, I am just  
 inserting my question.

(Whereupon, the previous  
 question, you are asking me the present opinion?  
 question was read back  
 by the reporter.)

310 Q. Did Mr. Rusch consider that his application time?  
 disclosed a wall bounce feature?

MR. ANDERSON: I object to  
 the question as asking this witness what Mr. Rusch  
 considered. It is speculative, hearsay; the  
 witness is not qualified to answer the question as  
 to what Mr. Rusch considered, but you may answer,  
 if you can.

THE WITNESS: I assume that  
 by wall bounce as referenced in this memo, Mr. Rusch



meant what we have referred to many times as edge

Q. bounce, but that is only an assumption on my part.

Q. Well, edge bounce is disclosed in the 284 patent?

A. I believe so.

Q. And edge bounce is Mr. Rusch's invention?

A. I believe so.

Q. What is the difference between edge bounce and what you call wall bounce?

A. Well, I look upon wall bounce - - - Or part of the

MR. ANDERSON: I object to the question, you are asking him his present opinion?

MR. FLANNERY: At that time, what did you consider?

MR. ANDERSON: At what time?

MR. FLANNERY: At the time that you wrote the 285 patent.

THE WITNESS: I don't know if the terms were even in existence at those times. I can't even recall that.

MR. ANDERSON: The patent applications speak for themselves.

MR. FLANNERY: To whom?

MR. ANDERSON: To everybody,

even some judges.

Q. What I am trying to do, Mr. Seligman, is to have some terms that we can use for the rest of the testimony. If I use edge bounce to indicate the subject matter of the 284 patent, will you understand that?

Q. When you read the MR. ANDERSON: Or part of the subject matter. Rusch was referring to by wall

MR. FLANNERY: Or part of the

A. subject matter. an assumption; I can't recall it,

no. THE WITNESS: I understand

Q. what edge bounce means.

Q. And if we refer to wall bounce as part of the subject matter of the 285 patent - - -

A. Yes, I will understand that.

Q. And when you received a copy of Exhibit 41, what did you believe Mr. Rusch meant by wall bounce?

MR. ANDERSON: I object to the

A. use of the labels. In view of the use of both

terms in different contexts in this and other

testimony, I think the witness should answer that

question in some functional term not in terms of

wall bounce or edge bounce, and the question is

still as of the date he wrote the application, you is that correct?

MR. FLANNERY: The date he received that.

THE WITNESS: Well, I have no specific recollection.

Q. When you read the memo, you don't recall what you believed Mr. Rusch was referring to by wall bounce?

A. I can only make an assumption; I can't recall it, no.

Q. What is your assumption?

A. My assumption is that he meant bouncing off the edge of the screen.

Q. Do you recall any discussions with Mr. Rusch or

anyone else prior to writing the 284 application

with respect to the subject matter of the 284

application?

A. I can't say - - - Well, certainly some had to be prior to. At least one had to be prior to. I had many discussions with Mr. Rusch while writing that application.

Q. Did you have any discussion with anyone else with

respect to the 284 application during the time you were writing the application?

A. I don't recall.

Q. Did you talk to Mr. Harrison?

A. It is also a possibility, but I have no specific recollection of talking to him.

Q. Do you recall how many drafts of that application you wrote?

A. No, I don't.

Q. I place before you a file which appears to be your file, Mr. Seligman, and I will ask you if you can identify the document that is contained in that file?

A. It looks to me like an early draft of the application which became the 284 patent.

Q. Does that contain all your writing or is there someone else's writing there?

A. There is some writing that isn't mine.

Q. Do you know whose writing that is?

A. I believe it is my secretary's.

Q. Any other writing in there that isn't yours?

A. There is some writing that has been erased which I do not believe is mine. There is a note here that

is not in my handwriting. It says, "These pages have been retyped because of changes by I. R. S."

Q. And when you submitted the draft to the inventor, did the inventor make changes in the draft?

A. I would assure he did.

Q. Did he make extensive changes?

A. I have no idea. Certainly this is not the draft that I would have submitted to the inventor.

Q. I place before you two documents which have been marked Exhibits 51 and 52 which have been identified as oaths in connection with the application for the 284 patent.

MR. ANDERSON: They are actually entitled oath, power of attorney and petition.

Q. Do you recall why those oaths weren't used?

A. No. I merely recall them being executed and having them reexecuted.

Q. Do you recall why?

A. But I cannot recall the reason.

Q. Do you recall having any interviews with the prosecution of the 284 application?

A. I have had interviews with the examiner, but I can't recall if it was this particular application.

- Q. I have had interviews regarding TV gaming applications. ~~What~~ in the first paragraph of the
- A. I place before you the file history of the 284 application and refer you to page 146 of that file history and ask you if that refreshes your recollection of an interview with the examiner in connection with the prosecution of that application?
- Q. I recall the interview. ~~Is it~~ fifteen minutes?
- A. Who was present at the interview?
- Q. I could only guess that it was Etlinger, Baer and myself, but I may be wrong. I am not sure that Baer was there. I am not even sure that Etlinger was there. ~~Is that correct?~~ I just to add
- Q. Did you bring any documents or things to the interview?
- A. I certainly brought documents. last paragraph on
- Q. Did you show any documents to the examiner that were not of record in the Patent Office? where?
- A. By documents, I mean I would have brought a copy of the application, the office action and so forth.
- Q. Did you present any drafts of amendments or anything to the examiner? you believe that that
- A. I don't recall. ~~Is that~~ as of the time that you wrote

Q. Do you recall what was said during that interview?

A. What is set forth in the first paragraph of the remarks section of this amendment is very clear to me as the agreement we entered into which I felt would make the claims allowable. "activity." Was

Q. How long did the interview last? time you wrote

A. I don't know.

Q. Was it five, ten minutes, fifteen minutes?

A. I really have no recollection. don't call the French

Q. And this was all that was said, this agreement?

A. I am sure we discussed it and tried to present our position why the claim as presented was allowable and I am sure the examiner wanted us just to add some more to the claim as evidenced by that first paragraph. application was a lot more relevant

Q. Now, the first sentence of the last paragraph on that page, Mr. Seligman, you state, "Applicant by his discovery presents improved apparatus whereby the general public may employ their television receivers in their individual homes for uses other than merely viewing telecast material displayed on the screens thereof." Did you believe that that statement was accurate as of the time that you wrote it?

A. Sure it is accurate. You believe that the 480

Q. You go on to state, "Applicant discloses apparatus whereby the standard television receiver currently

Q. used in the home can be further employed for the playing of games and other similar activity." Was that statement accurate as of the time you wrote the French patent was irrelevant. I didn't see where

A. It was an accurate statement, yes.

Q. Is there any reason why you didn't call the French patent to the attention of the examiner at this time?

A. Absolutely.

Q. What is that? That amendment, you state, "Although

A. Among others, it is clearly irrelevant. Certainly our previous application was a lot more relevant than the French patent.

Q. And you believed at that time that your prior application was a reference against this 284 application? Like a ball bouncing off a wall."

Did you believe that MR. ANDERSON: I object to the question as lacking a foundation, asking for a legal conclusion, asking for an opinion of the witness; and I instruct the witness not to answer.



Q. As of that time, do you believe that the 480 patent was more relevant than the French patent?

A. Clearly. ~~But I don't know if that is exactly true; I thought the~~ in connection with the

Q. And this is the reason why you didn't call the

A. French patent to the examiner's attention?

A. I don't know if that is exactly true; I thought the French patent was irrelevant. I didn't see where it had any bearing on this application. 714 patent?

Q. And that the Baer application was more relevant?

A. Was more relevant? was relevant to the reissue?

Q. Yes. MR. ANDERSON: I object, he

A. Oh, sure. testified. There is foundation for

Q. On page 24 of that amendment, you state, "Although Kiesling's 180-degree reversal is functionally similar to applicant's wall bounce scheme, applicant never claims wall bounce alone, but only in conjunction with a hit spot generation to cause a hit spot to bounce away from the edges of the screen much like a ball bouncing off a wall."

Q. Did you believe that that statement was accurate at the time that you wrote it? disclosure and so forth

A. I am sure I did. In this last statement, surely

A. the wall bounce referred to here is not the wall

bounce we have been referring to previously.

Q. Do you recall citing the French patent and the Hermann patent No. 3,046,676 in connection with the prosecution of the reissue applications?

A. I have a recollection in that regard.

Q. Is there any reason that you can recall for not calling the Hermann patent to the attention of the examiner during the prosecution of the 284 patent?

A. I didn't think it was very relevant.

Q. But you did feel it was relevant to the reissue?

A. Yes, it does. MR. ANDERSON: I object, he

Q. hasn't so testified. There is foundation for the question. letters were accurate as of the time

A. that you made them? THE WITNESS: I felt the reason that it was probably called to the examiner

Q. on the reissue, I believe it was predicated on the fact that parties in this lawsuit have cited it as prior art and we thought it would be wise to cite it to the examiner.

Q. What does D-2580 refer to? December 12, 1941?

A. That is how we refer to the disclosure and so forth pertaining to the 284 patent.

Q. I place before you a document which purports to be

a letter from you to your English associate dated December 30, 1970, which we will mark as Exhibit 79 and I will ask you if you wrote that on or about the date that it bears?

A. I would assume so.

(Whereupon, Exhibit 79

was marked for identification.)

57 Q. Does that letter relate to the foreign counterpart to the 284 application?

A. Yes, it does.

58 Q. Did you believe that the statements that you made in that letter were accurate as of the time that you made them?

A. Yes, sir, I assume I did.

59 Q. I place before you a document which purports to be an amendment filed in the Canadian Patent Office on December 10, 1971, which we will mark as Exhibit 80 and I will ask you if you wrote that amendment on or about December 10, 1971?

A. No.

60 Q. Do you know who wrote that amendment?

A. I assume someone in the office of our Canadian

associate from you to your Swedish associate,

Q. Do you instruct the Canadian associate as to what to put in the amendments?

A. We supply him with remarks, suggestions, recommendations, yes.

Q. Do you approve of the amendments prior to their being filed?

A. No. (Whereupon, Exhibit No. 81 was marked for identification.)

Q. They just file them and you don't check them out to see if they reflect the proper arguments and statements?

A. Not generally.

Q. Did you believe that the statements that you made in that letter were accurate as of the date that you wrote the letter? (Whereupon, Exhibit No. 80 was marked for identification.)

Q. Did you determine from this amendment what foreign

counterpart it relates to?

MR. ANDERSON: You mean the letter from you which purports to be a letter from you to the foreign counterpart of that U. S. case?

MR. FLANNERY: Yes.

THE WITNESS: I would say

A. the 284 patent.

Q. I place before you a document which purports to be

a letter from you to your Swedish associate, 82 dated December 27, 1971, which we will mark as Exhibit 81, and I will ask you if you wrote that on or about the date that it bears? part of the

Q. I would say so. Is issued as the 284 patent?

A. Yes.

Q. (Whereupon, Exhibit No. 81 Did you believe that the statements that you made was marked for identification.) in that document were accurate at the time that you

Q. Does that document relate to the foreign counter- part to the application which issued as the 284 patent? before you a document which purports to be

A. I believe it does. to the Canadian associate dated

Q. Did you believe that the statements that you made in that letter were accurate as of the date that you wrote the letter? date that it bears?

A. I would assume so.

Q. I place before you a document which purports to be a letter from you to your German associate dated May 31, 1972, which we will mark as Exhibit 82,

A. and I will ask you if you wrote that on or about the date that it bears? statements that you made

A. I would assume so. were accurate at the time that

you wrote them? you would want to say that you

A. I believe so.

(Whereupon, Exhibit No. 82  
was marked for  
identification.)

69 Q. Does that relate to the foreign counterpart of the  
application which issued as the 284 patent?

A. Yes.

70 Q. Did you believe that the statements that you made  
in that document were accurate at the time that you  
wrote them?

A. I had no reason to believe otherwise.

71 Q. I place before you a document which purports to be  
a letter from you to the Canadian associate dated  
September 13, 1972, which we will mark as  
Exhibit 83, and I will ask you whether you wrote  
that on or about the date that it bears?

A. I would assume so.

72 Q. Does that relate to the Canadian counterpart of  
the application which issued as the 284 patent  
in suit?

A. I would believe so.

73 Q. Do you believe that the statements that you made  
in this document were accurate at the time that  
you wrote them?

A. I believe so.

(Whereupon, Exhibit

No. 83 was marked for

identification.)

74 Q. I place before you a document which purports to be  
a copy of a letter from you to your German  
associate dated October 6, 1972, and I will ask you  
if you wrote that on or about the date that it  
bears?

A. I believe so.

75 Q. Does that document relate to the German counterpart  
to the application which issued as the 284 patent?

A. I believe so.

76 Q. Do you believe that the statements that you made  
in that letter were accurate as of the time you  
wrote them?

A. I believe so.

(Whereupon, Exhibit

No. 84 was marked

for identification.)

77 Q. I place before you a document which purports to be

Q. a letter from you to your Swedish associate dated November 2, 1972, which we will mark as Exhibit 85, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

(Whereupon, Exhibit

A. I believe so.

No. 85 was marked

(for identification.)

Q. Does that document relate to the Swedish counterpart of the application which issued as the 284 patent in suit?

A. Yes.

Q. Did you believe that the statements that were made in there were accurate at the time that you made them?

A. I would believe so.

Q. I place before you a document which purports to be a letter from you to your Dutch associate dated April 26, 1973, which we will mark as Exhibit 86, and I will ask you whether you wrote that on or about the date that it bears?

A. I believe so.



81 Q. Does that document relate to the Dutch counterpart  
of the application which issued as the 284 patent?

A. I believe so. (for identification.)

82 Q. Did you believe that the statements that you made  
in that letter were accurate at the time that you  
made them?

A. I believe so. dated August 21, 1973, and I will ask you if you  
wrote that or about the date that it bears?

A. I believe so. (Whereupon, Exhibit No. 86

Q. I will mark that as Exhibit No. 86, and I will ask you if you  
wrote that or about the date that it bears? (Whereupon, Exhibit No. 86  
was marked for identification.)

to the Australian counterpart to the application

83 Q. I place before you a document which purports to

A. be a letter from you to the Australian associate

dated June 1, 1973, which we will mark as

Q. Exhibit 87, and I will ask you if you wrote that  
on or about the date that it bears?

A. I believe so.

84 Q. Does that document relate to the Australian counterpart  
to the application which issued as the 284 patent?

A. I believe so. (It was marked

85 Q. Were the statements that you made in this document  
accurate at the time that you made them?

A. I believe so.

to the Australian counterpart to the application which issued as the 284 patent?  
re a letter from you to your Japanese  
associate dated January 4, 1973, which we will

mark as Exhibit 89. (Whereupon, Exhibit you wrote that on or about the No. 87 was marked for identification.)

A.

I believe so.

Q.

Does that document relate to the Japanese I place before you a document which purports to be counterpart to the application which issued as the 284 patent?

A.

Yes.

Q.

Did you believe that the statements made in this document were accurate at the time that you made them?

A.

I believe so.

Q.

I will mark that as Exhibit 88; and does that relate to the Argentina counterpart to the application which issued as the 284 patent?

A.

I believe I did.

A.

Yes.

(Whereupon, Exhibit

Q.

Are the statements that you made - - - Did you believe that the statements made in this document were accurate at the time that you made them?

Q.

I place before you a document which purports to

A.

I believe so.

be a letter from you to the Argentina associate dated February 26, 1974. (Whereupon, Exhibit you if you wrote that on or about No. 88 was marked for identification.)

A.

I believe so.

for identification.)

Q.

Does the document relate to the Argentina counterpart?

Q.

I place before you a document which purports to be a copy of a letter from you to your Japanese associate dated January 4, 1974, which we will

A.

I believe so, yes.

associate dated January 4, 1974, which we will

Q. mark as Exhibit 89, and I will ask you if you wrote that on or about the date that it bears? *at you*

A. I believe so.

Q. Does that document relate to the Japanese counterpart to the application which issued as the 284 patent? *(Whereupon, Exhibit*

A. Yes. *No. 89 was marked*

Q. Did you believe that the statements made in this document were accurate at the time that you made them? *a letter from you to your Mexican associate*

A. I believe I did. *74, which we will mark as Exhibit 91 and I will ask you if you wrote that on or about the date that it bears? (Whereupon, Exhibit*

A. I believe so. *No. 89 was marked for identification.)*

Q. Does that relate to the Mexican counterpart to

Q. I place before you a document which purports to

A. be a letter from you to the Argentina associate dated February 26, 1974, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

Q. Does the document relate to the Argentina counterpart to the application which issued as the 284 patent?

A. I believe so, yes. *(Whereupon, Exhibit*

*No. 91 was marked*

94 Q. Did you believe that the statements made in that document were accurate as of the time that you made them?

A. I believe so. (Whereupon, Exhibit

No. 90 was marked

for identification.)

5 Q. I place before you a document which purports to be a letter from you to your Mexican associate dated May 21, 1974, which we will mark as Exhibit 91 and I will ask you if you wrote that on or about the date that it bears?

A. I believe so.

Q. Does that relate to the Mexican counterpart to the application which issued as the 284 patent?

A. I believe so.

Q. Did you believe that the statements that you made in that document were accurate at the time that you made them?

A. Yes, I did.

(Whereupon, Exhibit

No. 91 was marked

Q. (for identification.)  
I place before you a document which purports to be a letter from you to the Dutch associate dated February 27, 1975, which we will mark as Exhibit 92, and I will ask you if you wrote that on or about the date that it bears?

A. I believe I did.

Q. Does that relate to the Dutch application which is a counterpart to the application which issued as the 284 patent?

A. Yes, it does.

Q. Did you believe that the statements that you made in that document were accurate at the time that you made them?

A. I believe I did.

A. No. Any recollection about - - -  
(Whereupon, Exhibit

Q. The use of a fixed hit spot in a TV game.  
No. 92 was marked

A. before I started writing  
(for identification.)

Q. Yes.

Q. What was your first knowledge of the use of a fixed hit spot in a TV game?

A. I don't recall.

Q. Was it prior to writing the application for the

Q. 285 patent? I first knowledge of the subject matter  
 A. I can't say for sure. I assume I must have known  
 about it. I generally look into the matter somewhat  
 before starting to write.

Q. Your best recollection is that you do remember?

A. No, I don't remember at all. I have no recollection  
 of knowing about a hit spot prior to starting to  
 write that application.

Q. Do you recall what you MR. ANDERSON: A fixed hit  
 spot. The question was a fixed hit spot. The  
 285 patent?

THE WITNESS: I know, that  
 is what I said. That is what I meant to say.  
 I have no recollection of that before I started  
 to write. As to when you obtained your first

Q. Do you have any recollection? A hit spot in

A. No. Any recollection about - - -

Q. The use of a fixed hit spot in a TV game.

A. Before I started writing? That would refresh your

Q. Yes. I don't recall.

A. No.

Q. You wrote the application which was filed and  
 issued as the 285 patent, didn't you? I can't say.

A. Yes, I did. Are you documents which were produced

Q. What was your first knowledge of the subject matter which you wrote into that application? could you,

A. I don't know. I don't recall. what your first

Q. Did you see a device constructed - t - e - e Did you see a device employing the fixed hit spot in a

A. TV game prior to your starting to write the refresh application?

A. I don't remember. earliest recollection of that?

Q. Do you recall what you reviewed prior to starting to write the application which issued as the number 285 patent? one with the inventors in the preparation

A. No. the application.

Q. Is there anything that would refresh your recollection as to when you obtained your first knowledge of the use of a fixed hit spot in

A. a TV game? both Mr. Stlinger and myself.

A. I don't know. did you make as to inventorship?

Q. You don't know of anything that would refresh your recollection? one or more of the individuals as the

A. Right. and after a substantial discussion with

Q. Would your files refresh your recollection? I three

A. I don't know if they would or not, I can't say.

Q. I place before you documents which were produced

A. for our inspection and they appear to be your  
Q. working files for the 285 application, could you  
go through those and determine what your first  
knowledge of the use of a fixed hit spot in a  
TV game was?

A. I don't find anything in here that would so refresh  
my recollection.

Q. Well, what is your earliest recollection of that?

A. Regarding this application, all I recall is that  
I had more than the usual amount of - the number  
of discussions with the inventors in the preparation  
of the application.

Q. Who decided or who made the decision as to who  
was to be named as the inventor on the application  
which issued as the 285 patent?

A. I believe both Mr. Etlinger and myself.

Q. What investigation did you make as to inventorship?

A. Talking to the three parties involved trying to  
separate out one or more of the individuals as the  
inventors and after a substantial discussion with  
them, it was our considered opinion that all three  
were in fact inventors of this invention.

Q. Of all of the subject matter of the claims?



A. I believe so.

Q. What did Mr. Baer contribute to the subject matter of that application?

MR. ANDERSON: Catch-all? I object to the question; are you asking for his present knowledge?

MR. FLANNERY: During his investigation.

MR. ANDERSON: What he thought at the time that he made this investigation somewhere around 1972 or earlier?

MR. FLANNERY: When he determined who the inventors were.

THE WITNESS: I don't believe I could identify his contribution nor any specific contributions of Mr. Rusch or Mr. Harrison. I believe the three of them were working together, they could not separate what each had done and I think the invention evolved out of the efforts of the three parties and there was no other way but to name all three of them as inventors.

Q. Was this application a catch-all for all the game features not covered in the other applications?

MR. ANDERSON: I Object to the

question as vague and ambiguous. Would you like to withdraw it? ~~which one's effort from another~~ one's effort. Many MR. FLANNERY: No. that they all worked together THE WITNESS: A catch-all?

Q. Yes. of these named individuals as inventors. You

A. No, I wouldn't say that. ~~that~~ contribution that

Q. Right now you have no recollection as to what

Q. you determined at the time that you filed the off application as to the contribution of each of the

A. inventors? Oh. ~~there was no one at the time who could~~

A. I don't believe at the time that I filed it that

Q. individual contributions of the inventors could be

ascertained. And it was a joint effort and it was

clearly our opinion when we talked to them that it?

we could not distinguish contributions of one versus the other. ~~as an action for an opinion and based~~

Q. Did you determine that the three named inventors were the inventors of all the subject matter

only on the fact that the three inventors worked

on the project jointly? ~~Will you repeat~~

A. No. question, please?

Q. What else was involved?

A. They believed that they all contributed. That the ~~question was read back~~

subject matter was worked on together, that they couldn't distinguish one's effort from another was one's effort. Many applications, but that they all worked together and we just could not select two of these named individuals as inventors. You couldn't split out a distinct contribution that would make one or more the inventors.

Q. Did all three have the idea of having a bounce off a fixed image?

A. I don't know. There was no one at the time who could stand up and say it is my invention.

Q. Was the subject matter of this application which issued as the 285 patent conceived after the invention of the subject matter of the 284 patent?

Q. During the trial, MR. ANDERSON: I object to the question as asking for an opinion and based upon his present knowledge and a matter on which he is not qualified to testify. It would be hearsay. Conception is a mental process.

THE WITNESS: Will you repeat the question, please?

(Whereupon, the previous question was read back

the question?

by the reporter.)

THE WITNESS: I believe it was.

Q. That was your understanding?

A. Yes.

Q. Is there any reason why you did not cite the

French patent and the Hermann patent at the

Patent Office during the prosecution of the 285

patent? A. I didn't attempt to introduce new

A. I didn't believe they were relevant. I guess

Q. Why not? A. I would say yes to that.

A. Why not? attempt to claim one type of subject matter

Q. Yes. the 284 patent and another type in the 284 patent

A. Because they didn't include fixed hit spots and

A. interaction with another spot. distinct inventions

Q. During the prosecution of the 480 patent and the

Q. 284 patent and the 285 patent, did you try to

maintain a distinction in the claimed subject

matter? A. I am asking for an opinion on the

invention, the 480. MR. ANDERSON: I object to  
the question as asking for an opinion.

Q. In your testimony, MR. FLANNERY: An opinion;

I am asking him what he did. actions, what criteria

MR. ANDERSON: Will you read

the question?

MR. ANDERSON: Same objection

and same instruction. The claims speak for themselves, the claims are the subject matter of this litigation; I don't think there is any relevance at all to what this witness was thinking or what his opinion is. (Whereupon, the previous question was read back by the reporter.)

THE WITNESS: I certainly tried to keep the claims within the bounds of the application. I didn't attempt to introduce new matter in any of the applications. I guess the generally I would say yes to that.

232 Q. Did you attempt to claim one type of subject matter in the 280 patent and another type in the 284 patent and another type in the 285 patent?

A. Yes, I think there were three distinct inventions and that is what I was attempting to claim.

233 Q. What were those three distinct inventions?

MR. ANDERSON: I object to the question, it is asking for an opinion on the invention, the claims speak for themselves and I instruct the witness not to answer.

34 Q. In your maintaining of the distinction between the claims in the three applications, what criteria did you use in determining the distinction?

MR. ANDERSON: Same objection and same instruction. The claims speak for themselves, the claims are the subject matter of this litigation; I don't think there is any relevance at all to what this witness was thinking or what his opinion is at this time, pendency of that application.

MR. FLANNERY: I didn't ask him what his opinion was at this time, I asked him what his opinion was at that time. He was doing the prosecution. I also have a very vague recollection that he was at a deposition.

MR. ANDERSON: The claims speak for themselves and I instruct the witness not to answer.

Q. Do you take your attorney's advice? It is also

A. Absolutely. the specifications of those applications,

Q. Did you consider informing Examiner Trafton of the pendency of the 480 patent? FLANNERY: The patent speaks for itself.

MR. ANDERSON: I am sorry, is that a question; I didn't hear it. Would you read it back, please?

Q. Did Examiner Trafton ever ask you to elect as to (Whereupon, the previous which subject matter came first as far as the question was read back 480 patent, the 384 patent and the 275 patent

is concerned?

by the reporter.)

I don't recall.

MR. ANDERSON: I object to

the question in that it is not fixed in time.

Q. During the prosecution of the 284 and 285 late applications, 1972, which we will mark as

A. I have a belief that he knew of the pendency of that application. Is that correct?

Q. What do you base that belief on?

A. I have a vague recollection that we discussed it with him. I also have a very vague recollection that he was at a demonstration which we held and an interview in the prosecution of the 480 patent. You say that?

Q. On the other ones the MR. ANDERSON: It is also recited in the specifications of those applications, of course. The 284 and the 285, Mr. Flannery.

Q. Is that an indication, MR. FLANNERY: The patent speaks for itself?

Q. Do you have any more? MR. ANDERSON: Right, didn't precisely.

Q. Did Examiner Trafton ever ask you to elect as to which subject matter came first as far as the letter 480 patent, the 284 patent and the 285 patent

is concerned?

A. I don't recall.

Q. I place before you a document which purports to be a letter from you to your German associate dated June 5, 1972, which we will mark as Exhibit 93, and I will ask you if you wrote that on or about the date that it bears?

A. It is hard for me to say on this one.

(Whereupon, Exhibit

No. 93 was marked  
for identification.)

Q. Why do you say that?

A. On the other ones there was an indication when a particular letter was mailed and that was helpful in determining the date. This one, there is such an indication, but the copy is so poor that it can't be read.

Q. Do you have any reason to believe that you didn't write that on or about that date?

A. I have no reason to believe I didn't.

Q. In the normal course of business, would that letter have been sent out by you on that date?



A. Normally yes unless there was some reason it was held up. It appears that it was mailed sometime in 1972.

Q. Do you have a habit of dating documents at a different date than you mail them out?

A. No. Documents sometimes do get dated and hang around for a while.

Q. But it was written by you?

A. Yes, I have no reason to believe it wasn't.

Q. And it was mailed?

A. I believe it was. There is sufficient indication that it was mailed.

Q. Does that document relate to the German counterpart to the application which issued as the 285 patent?

A. I believe it does. Yes, it does.

Q. Did you believe that the statements that you made in this letter were accurate at the time that you made them?

A. I have no reason to believe otherwise.

Q. I place before you a letter that appears to be a letter from you to the German associate dated July 5, 1972, and ask you if that was mailed on or about the time that it was written? We will

mark it as Exhibit 94. Made in there were accurate?

A. I believe so, yes.

Q. Does that relate to the German counterpart of  
(Whereupon, Exhibit  
the application that issued as the 285 patent?  
No. 93 was marked

A. Yes.

Q. Do you believe that the statements that you  
(for identification.)  
made in this document were accurate at the time  
that you made them? your Swedish associate dated

A. I believe so. 1972, which we will mark as Exhibit 96,  
and I will ask you if you wrote that on or about  
(Whereupon, Exhibit  
the date that it bears?

A. I believe so. No. 94 was marked

Q. Does that relate to the application which issued  
(for identification.)

Q. I place before you a document which purports to be

A. a letter from you to your associate in Israel

Q. dated September 27, 1972, which we will mark as  
Exhibit 95, and I will ask you if you wrote that

A. on or about the date that it bears?

A. Probably.

Q. Does the document relate to the Israel counterpart  
(Whereupon, Exhibit  
to the application which issued as the 285 patent?  
No. 95 was marked  
(for identification.)

A. Yes.

Q. When you wrote that document, did you believe that

the statements that you made in there were accurate?

A. Yes. 1, 1973, which we will mark as Exhibit 97,  
and I will ask you if you wrote that on or about  
(Whereupon, Exhibit

A. I believe I did. No. 95 was marked  
for identification.)

Q. Does that relate to the Swedish counterpart of the

Q. I place before you a document which purports to be  
A. a letter from you to your Swedish associate dated

Q. November 2, 1972, which we will mark as Exhibit 98,  
and I will ask you if you wrote that on or about  
A. the date that it bears?

A. I believe so.

Q. Does that relate to the application which issued  
as the 285 patent? No. 97 was marked

A. Yes. (Whereupon, Exhibit  
for identification.)

Q. At the time that you wrote that document, did you  
believe that the statements were accurate?

A. I did. July 12, 1973, which we will mark as  
Exhibit 99, and I will ask you if you wrote  
(Whereupon, Exhibit

A. I believe I did. No. 96 was marked  
for identification.)

Q. Does that document relate to the Dutch application

Q. I place before you a document which purports to be

a letter from you to your Swedish associate dated June 3, 1973, which we will mark as Exhibit 97, and I will ask you if you wrote that on or about the date that it bears?

A. I believe I did.

Q. Does that relate to the Swedish counterpart of the application which issued as the 285 patent?

A. Yes.

Q. At the time you wrote the document, did you believe that the statements made therein were correct?

A. I believe I did.

(Whereupon, Exhibit

No. 97 was marked

for identification.)

Q. I will place before you a document which purports to be a letter from you to your Dutch associate dated July 12, 1973, which we will mark as Exhibit 98, and I will ask you whether you wrote that on or about the date that it bears?

A. I believe I did.

Q. Does the document relate to the Dutch application which is the foreign counterpart to the application

A. which issued as the 285 patent?  
 A. Yes.

Q. And to the time that you wrote that document, you?

A. did you believe that the statements that you made therein were accurate?

A. I did so believe. I probably wrote the letter and he probably made changes thereto.

(Whereupon, Exhibit

No. 98 was marked

for identification.)

(for identification.)

Q. I place before you a document which purports to be

Q. a letter from you to your Dutch associate dated March 26, 1975, which we will mark as Exhibit 99 and I will ask you if you wrote that on or about the date that it bears? I will ask you if you

A. It bears Mr. Etlinger's signature, not mine. I

A. believe I at least wrote part of this on or about

Q. that date which appears. At, did you believe that

Q. Does that document relate to the Dutch counterpart to the application which issued as the 285 patent?

A. Yes.

(Whereupon, Exhibit

Q. At the time that you wrote that, did you believe

that the statements therein were accurate?

(for identification.)

A. Those statements that were written by me in this letter.  
 Q. Could you identify which ones were written by you?  
 A. It is hard for me to separate which were my statements and which were Mr. Etlinger's statements.  
 I have a belief that I probably wrote the letter and he probably made changes thereto. reasons?

I think he vaguely discussed Soviet-style double patenting problems or something like that.  
 (Whereupon, Exhibit No. 99 was marked

for identification.)  
 Any other reasons?  
 A. Not that I recall.

Q. I place before you a document which purports to be a letter from you, a copy of a letter from you to Mr. Williams dated May 21, 1975, which we will mark as Exhibit 100, and I will ask you if you wrote that on or about the date that it bears?

A. I believe so. the claims, if you know?

Q. At the time you wrote that, did you believe that the statements made therein were accurate?

A. I believe I did. I trust the address not to answer.

Did you have any discussions concerning the filing of the release applications with the inventors or anyone else?  
 (Whereupon, Exhibit No. 100 was marked for identification.)

Q. Mr. Seligman, do you recall that you requested the Patent Office to issue the 284 and 285 applications on the same day?

A. Yes.

Q. Can you give us the reasons why you requested that?

A. I was instructed to by Mr. Ettlinger.

Q. For what reasons? Did he tell you the reasons?

A. I think he vaguely discussed obviating double patenting problems or something like that.

Q. Any other reasons?

A. Not that I recall.

Q. In preparing the reissue application for the 284 patent, did you prepare the claims?

A. The 284 reissue?

Q. Yes.

A. I may have had something to do with it.

Q. Who did prepare the claims, if you know?

MR. ANDERSON: I object on the ground of attorney-client privilege and work product and I instruct the witness not to answer.

Q. Did you have any discussions concerning the filing

A. of the reissue applications with the inventors

Q. or anyone else?

278 A. Yes. I asked to them why the reissues were being-  
 Q. Whom did you have discussions with?

279 A. I certainly had discussions with the inventors.

Q. Anyone else? that our opponents in the lawsuits

A. Let's have the question again, please? the claims of the patents, did not cover the coin-operated games and even though it was our opinion question was read back that they did, in order to clear the air and leave by the reporter.) no doubt as to whether or not they did, we wanted to file these reissues THE WITNESS: Mr. Etlinger.

80 Q. Anyone else? invention certainly was intended to

A. Mr. Anderson. an just a home game.

1 Q. Anyone else? person's opinion that the claims of his

A. Mr. Williams. covered coin-operated games?

2 Q. Anyone else? Mr. Anderson. Mr. Anderson: I object to the

A. Mr. Cesari. asking for speculation. You want to

Q. Anyone else? Rusch told this witness?

A. Mr. Broidy. MR. FLANDRY: Yes, what

Q. Anyone else? in your

A. Mr. Trafton. THE WITNESS: I don't know

Q. Anyone else? Mr. Rusch like many inventors has

A. Not that I can think of at present, but Mr. Rusch was

Q. What discussions did you have with the inventors?



A. I explained to them why the reissues were being filed, based on the memorandum you presented earlier.

Q. What did you tell them?

A. I told them that our opponents in the lawsuits

Q. had expressed defenses that the patents, the essential claims of the patents, did not cover the coin-operated games and even though it was our opinion

A. that they did, in order to clear the air and leave no doubt as to whether or not they did, we wanted to file these reissues; and it was their opinion that their invention certainly was intended to cover more than just a home game.

Q. Was it Mr. Rusch's opinion that the claims of his application covered coin-operated games?

A. I have a recollection. MR. ANDERSON: I object to the question as asking for speculation. You want to know what Mr. Rusch told this witness?

Q. When you first talked MR. FLANNERY: Yes, what Mr. Rusch told you. THE APPLICATIONS, did you have a draft of the declaration? THE WITNESS: I don't know

what he said. Mr. Rusch like many inventors has

Q. great problems with patent claims, but Mr. Rusch was very adamant in his belief that he certainly had

an invention which was infringed by the games as evidenced by the memorandum you presented earlier.

A. Coin-operated games?

Q. Yes, Mr. Harrison, did he make any changes in it?

A. Did Mr. Baer, Mr. Harrison and Mr. Rusch express the view that they believed that the claims of their 285 patent covered coin-operated games?

A. I am sure they did because when they signed the declaration, we explained to them what the purpose was and what have you and went through the

A. declaration, so they would understand what it was all about.

Q. Were the inventors consulted prior to the preparation of the declarations?

A. I have a recollection of Mr. Baer being somewhat involved; I don't recall with respect to Mr. Harrison and Mr. Rusch.

Q. When you first talked to Mr. Rusch about the filing of the reissue applications, did you have a draft of the declaration prepared?

A. I don't recall.

Q. When you submitted the draft of the declaration

A. to Mr. Rusch for signature, did he make any changes

in it? It expressed by the manufacturers of

A. I don't believe so, that they didn't influence.

Q. When you submitted the draft of the declaration to Mr. Harrison, did he make any changes in it?

A. Not that I recall. I think, you were referring to

Q. When you submitted the draft of the declaration

A. to Mr. Baer, did he make any changes in it?

A. I don't believe so, told them.

Q. Did any of the inventors make any comments with respect to the declarations?

A. If they did, I don't recall them.

Q. In place before you the file history of the reissue for the 284 patent and it states in there,

"The 284 patent is partly inoperative by reason of a defective specification." What was defective about the specification? of the declaration?

A. That it was interpreted by our opponents in this lawsuit as not to include other than home-type TV. attempted to do - - -

Q. Isn't it a fact, Mr. Seligman, that these doesn't, declarations were prepared before there were any opponents in the lawsuits? Is it?

A. It could be. If I am wrong about that, there was

at least expressed by the manufacturers of coin-operated games that they didn't infringe.

Q. When you explained this declaration to the inventors, did you indicate to them that in effect by defective specifications, you were referring to the claim?

A. I don't remember. I have no recollection of specifics of what I told them.

Q. The declaration refers to an exclusive licensee, who is that, Mr. Seligman?

A. Magnavox Company.

Q. And it refers to both said Letter's Patents, what patents is it referring to?

MR. ANDERSON: I object, you are taking a word out of context. Are you referring to the first page of the declaration?

MR. FLANNERY: Yes, it says the exclusive licensee of said Letter's Patents has attempted to both - - -

MR. ANDERSON: No it doesn't, it says, "Both said Letter's Patent and other United States Letter's Patent."

MR. FLANNERY: I am sorry,

I misread it.

Q. Over on the second page of the declaration, it says, "That in the context of my invention and in the context of the description thereof" . . .

MR. ANDERSON: Can you tell me what line you are reading from, approximately?

MR. FLANNERY: Five. ~~the fourth~~

MR. ANDERSON: Thank you.

Q. "In said Letter's Patent 3,659,284, I have always understood and believed 'television receiver' and 'standard television receiver' to mean any standard cathode ray tube incorporating circuitry for a raster-type scan." Did Mr. Rusch agree with that statement?

A. Yes, he did. ~~that arise?~~

Q. There is a similar statement in the reissue declaration for the reissue of the 285 patent,?

A. did the three inventors of that patent agree with that statement? ~~an error on your part?~~

A. I have no reason to believe they didn't and I am not sure they would not have signed the declaration if they believed otherwise. ~~is your error, is that~~

Q. How did this error arise?

A. It can't be only my error, it is their application that they are signing too and

MR. ANDERSON: I object, what error?

MR. FLANNERY: The error, in the original patent, the 284 patent.

MR. ANDERSON: Is that word in the declaration?

MR. FLANNERY: Yes, the fourth line from the bottom.

THE WITNESS: You are talking about the next to the last line of page 2?

Q. The fourth line up. Through error and without any deceptive invention - - -

A. Not including claims of that scope, claims of that form?

Q. Yes, how did that arise?

A. By my not putting them in.

Q. Well, didn't you understand the subject matter?

A. I understood the subject matter.

Q. You mean it was an error on your part?

A. I should have perhaps made it clearer what I meant by a television receiver.

Q. Then the error referred to is your error, is that correct?

A. It can't be only my error, it has to be the inventors' error, it is their application that they are signing too and which they are claiming is their invention.

Q. So it was both your errors?

MR. ANDERSON: I object, the document speaks for itself. The witness has stated an answer to that question already and the witness is the attorney, the representative of the inventor, and speaks on behalf of the inventor.

Q. You can answer the question, Mr. Seligman.

A. I guess it could be looked upon as both the attorneys' error and the inventors' error.

Q. Well, could you tell us what was the reason why you made that error?

MR. ANDERSON: I object to suppose the question as asking for speculation and it is irrelevant.

MR. FLANNERY: It is very relevant, Mr. Anderson, it is required by the rules of the Patent Office to state that and you didn't state it in your oath.

MR. ANDERSON: The document

speaks for itself.

MR. FLANNERY: It didn't state it, that is why I am asking it.

MR. ANDERSON: I disagree.

MR. FLANNERY: The rules of the Patent Office require the applicant to state how the error arose. That is all I am asking here of Mr. Seligman who is responsible for the prosecution of the 284 and 285 patents as to how the error arose.

MR. ANDERSON: He has already stated how the error arose, if there is any error, and the oath does also.

MR. FLANNERY: Well, maybe you could explain it to me.

MR. ANDERSON: I see no purpose in you and I having a colloquy at this time on the subject. I consider the last question an improper exploration into the attorney's opinion, judgment - work product - and I instruct the witness not to answer.

MR. FLANNERY: In other words, you are refusing to allow us to go into how the



error arose that is referred to in the reissue what declarations?

MR. ANDERSON: You have gone into that with this witness and you have gone into that same subject with the inventors. You have explored that fully. You have now asked the witness to speculate as to reasons underlying - underlying reasons, and I think the record is clear. By the

MR. FLANNERY: All right; I will ask him what facts were involved in the error which occurred during the prosecution of the 284 and 285 application.

MR. ANDERSON: He has already answered that question. The facts that are involved are what arose when the manufacturers of coin-operated games took a position that was contrary to what the - and he has testified to this - what he and the inventors thought the patents covered.

MR. FLANNERY: Could we stipulate that that is the error and the only error?

MR. ANDERSON: No, the record speaks for itself.

MR. FLANNERY: Then let him

answer. I am willing to stipulate to exactly what you just said.

MR. ANDERSON: I object, you

are asking for the opinion. MR. ANDERSON: The document speaks for itself.

Q. All right; how did the error arise? the inclusion

A. How did the error arise? of said Letter's Patent

Q. Yes, 1,785, such as claims 29 and 31 which might form

A. With the interpretation put on the claims by the those manufacturers of coin-operated games.

Q. But, as far as the inventors were concerned and you are concerned, that was not an error?

A. Do you want to repeat that? the radio frequency or the video portions bypassed by disability was (Whereupon, the previous question was read back through error and without any deceptive intentions; that is at the bottom of page 2 of the declaration by the reporter.) of the reissue of the 234 patent.

Q. THE WITNESS: Well, it led to some doubt in the minds of the reader of the patent as to the coverage.

Q. But you believe the coverage was proper?

A. I know what I intended to write claims to cover.

Q. And at the time that this declaration was executed, do you believe that the claims did cover coin-operated

games?

MR. ANDERSON: I object to the question on the MR. ANDERSON: I object, you are asking for the opinion of this attorney; it is irrelevant and it is a privileged matter. The declaration is clear, it says, "That the inclusion of terms within claims of said Letter's Patent 3,659,285, such as claims 25 and 51 which might form a basis for any party to take the position that those claims do not include television games using as a video device either a television monitor or a television receiver intended to receive broadcast television signals, but with the radio frequency or the video portions bypassed by disability was through error and without any deceptive intentions;" that is at the bottom of page 2 of the declaration of the reissue of the 284 patent.

Q. But, as far as you are concerned, the claims did cover those structures?

A. Yes.

Q. There was an interview prior to filing the reissue applications, Mr. Seligman, which you attended with Mr. Williams and you interviewed the examiner, Mr. Trafton; what was the purpose of that interview?

MR. ANDERSON: I object to the question on the ground that "interview" has a special meaning and I think there is no foundation for the question in that there has been no establishment of any activity for a special meeting. Well, we told him why we were filing the reissues.

MR. FLANNERY: Use discussion for interview. In the declarations?

MR. ANDERSON: All right; do you want to restate the question? Examiner Trafton

MR. FLANNERY: No. Of the reissue applications?

THE WITNESS: Merely to discuss with him and inform him of what we were doing. With respect to the filing of the reissue

Q. Why did you want to inform him of what you were doing? Think we already just said that.

A. Just to get his feelings in the matter. On a day.

Q. Why did you want to get his feelings in the matter?

A. With the examiner in the parent case - - -

Q. Would you have filed the reissue applications anyway? Yes, this?

A. Would we have?

Q. Yes. Don't recall any, perhaps a phone call to

- A. If he had given us a negative opinion?
- Q. Yes. Did you say during that phone call?
- A. I don't know, we never discussed that question.
- Q. Did you discuss the declarations with Examiner Trafton?
- A. Not in detail, we told him why we were filing the reissues.
- Q. Have any documents with you at that time?
- Q. Did you show him the declarations?
- A. I don't recall showing him the declarations.
- Q. Did you have any discussions with Examiner Trafton prior to the day or two before the filing of the reissue applications?
- A. To the examiner?
- A. Discussions with him?
- Q. Yes, with respect to the filing of the reissue applications.
- A. Showing him.
- A. Yes, I think we already just said that.
- Q. As I understand it, you had the discussion a day or two prior to the filing of the application?
- A. Yes, we were filing the reissues.
- Q. Did you have a discussion prior to that time?
- A. Regarding this?
- Q. Yes, that the claims did not cover their
- A. I don't recall any, perhaps a phone call to

arrange this meeting. is?

Q. What did you say during that phone call? then

A. I have no idea. to make that statement, but we just

Q. Did Mr. Trafton examine the declarations at that discussion?

A. I don't believe so. Mr. Trafton say?

Q. Did you have any documents with you at that discussion? and a application covered coin-operated

A. Yes..

Q. What documents did you have with you?

A. The reissue applications.

Q. Did you submit those to the examiner?

A. No. we no idea.

Q. Did you show them to the examiner? at he said?

A. I don't recall showing him. visualization of what he

Q. What do you recall showing the examiner? from

A. I don't think we showed him anything. I think we discussed the situation with him and discussed why we were filing the reissues.

Q. What did you exactly tell him?

A. That coin-operated game manufacturers took the

position that the claims did not cover their equipment. as.

- Q. That is all you told him?
- A. I am sure the discussion went on for more than thirty seconds to make that statement, but we just discussed that general situation as best as I can recall.
- Q. What did then Examiner Trafton say?
- A. There was no doubt in his mind that the claims in the original application covered coin-operated games.
- Q. Did he say that in those exact words?
- A. No, sir.
- Q. What did he say?
- A. I have no idea.
- Q. That is your characterization of what he said?
- A. That is a pretty good characterization of what he said because certainly we liked that opinion from him.
- Q. Did you know Examiner Trafton prior to the filing of the reissue applications?
- A. Sure.
- Q. Where did you know him from?
- A. We had an interview with him on the original applications.

- Q. Have you seen Examiner Trafton outside of the Patent Office? letters to the Patent Office after the No. 1284 reissue by Mr. Williams.
- A. No.
- Q. There was also an interview with the examiner during the prosecution of the reissue applications, what was the purpose of that interview? Mr. Williams?
- A. I don't recall.
- Q. Do you recall an interview with the examiner on the reissue, the 1284 reissue, after that patent was allowed? sent to Mr. Williams, though, or received
- A. An interview with the examiner after the patent was allowed? must have, we authorized him to have
- Q. Yes. Maybe I am using the wrong term, after the examiner had allowed all the claims, that interview,
- A. I have a vague recollection of wanting to cite some new art; I don't know if we had an interview regarding that matter or not. Is that what you are referring to? Mr. FLANNERY: That is all I
- Q. Yes, do you recall any interview?
- A. Unfortunately, I don't. I can't recall.
- Q. Well, the file history indicates that Mr. Williams was at the interview, were you also at the interview?
- A. All right; no, I wasn't. Reporter Mark as



Q. The file histories indicate that you wrote the amendments or letters to the Patent Office after the interview by Mr. Williams. you recall?

A. That is correct.

Q. How did you obtain the information of what was discussed at the interviews from Mr. Williams?

A. I don't recall. translation of French Patent

Q. Did Mr. Williams send you a letter? his inquiry.

A. I don't recall. the original of that letter?

Q. You did talk to Mr. Williams, though, or received some communication from him after the interview?

A. I am sure we must have, we authorized him to have the interview; I am sure we must have communicated.

A. In fact, I remember in response to that interview, I wrote a letter thanking him for seeing Mr. Williams and Mr. Anderson and then later found out that Mr. Anderson was not at the interview.

A. I do believe that. MR. FLANNERY: That is all I have.

MR. FLANNERY: Objection

(Interrogatories by Mr. Anderson.)

Q. All right, Mr. Seligman, I place before you a collection of documents which are stapled together and which I will have the reporter mark as

Sanders' Exhibit 101-1 through 101-7 and ask you if those are documents which you referred to during the direct examination, if you recall? It is a letter Yes, they are.ish associate to Sanders enclosing

A. And what is Sanders' Exhibit 101-12 1,180,470.  
 Q. It is a letter to our Swedish associate requesting that he obtain a translation of French Patent No. 1,180,470 prior to responding to his inquiry.  
 A. Did you write the original of that letter? 1971.  
 Q. Yes.

A. MR. ANTONSON: All right, and  
 Q. And do you know whether or not it was mailed?  
 A. Yes. Sanders' files?

Q. Was it mailed, the original? MR. ANTONSON: Yes.

A. The letter indicates that it was mailed on is the January 25, 1971. Do ask her relevant questions

Q. Do you believe it was mailed on or about that date to the Swedish associate? MR. ANTONSON: I didn't ask

A. I do believe that. MR. ANTONSON:

MR. FLANNERY: Objection referred as to his present belief.

Q. Will you refer to Exhibit 101-2 and state what that is?

A. That is a letter from --- referred by referring to

that letter.

MR. FLANNERY: Objection, the document speaks for itself. Sanders' exhibits

101-3 through 101-7? THE WITNESS: That is a letter from our Swedish associate to Sanders enclosing a translation of French Patent No. 1,180,470.

Q. What is the date of that letter?

MR. FLANNERY: I will stipulate it is February 18, 1971, and I will stipulate that it was received by Sanders on February 19, 1971.

A. I believe so.

MR. ANDERSON: All right; and do you want to stipulate that it comes from the Sanders' files?

MR. FLANNERY: Yes.

MR. ANDERSON: And it is the letter by which you ask Mr. Seligman questions on direct examination? prior to receiving the translation, 1971?

MR. FLANNERY: I didn't ask him any questions on it.

MR. ANDERSON: Well, he referred to it.

MR. FLANNERY: You ask him.

MR. ANDERSON: You asked him questions about which he responded by referring to

that letter.

Q. Mr. Seligman, can you identify Sanders' Exhibits 101-3 through 101-7?

A. It is a five-page document bearing the title ~~man~~, translation of French Patent 1,180,470 published June 4, 1959.

Q. Was there an attachment to the letter Exhibit 101-2, to the best of your knowledge, when it was received on February 21, 1971, in the Sanders Patent Department?

A. I believe so.

Q. And what was the attachment, to the best of your knowledge?

A. Exhibit 101-3 through 101-7.

Q. To the best of your knowledge, had the Sanders or of Patent Department ever received a translation of French Patent No. 1,180,470 prior to receiving the translation, Exhibit 101-3 through 101-7?

A. To the best of my knowledge, Sanders never did receive such translation prior to that. ~~am not sure.~~

MR. ANDERSON: No further questions.

(Whereupon, Exhibits 101-1

Exhibit 101-7 after rereading 101-7 were  
I understand the word marked for each language is  
receivers, not receive-identification.)

MR. FLANNERY: Mr. Seligman,  
this translation which is attached to this  
Exhibit 101-2 is not an exact copy of the original  
translation which you received, is that correct?  
THE WITNESS: That is correct.  
Yes.

MR. FLANNERY: No further  
questions.  
MR. FLANNERY: No further  
(Interrogatories by Mr. Anderson.)

Q. Mr. Seligman, how does the attachment, 101-3 through  
101-7, differ, if you know, from the translation  
which was received from the Swedish association or  
about February 19, 1971? 101-7, is dated

A. I believe a letter "s" has been added to a word  
on the second line of 101-7. In the "Patent

Q. Do you know who added that "S"??

A. Perhaps I did, perhaps someone else, I am not sure.

Q. And do you know when it was added?

A. I believe it was sometime not too long after we  
received this translation.

Q. Why did you add the "S" in the second line of clerk

Exhibit 101-7 after receiving it?

A. I understand the word in the French language is receivers, not receiver.

MR. ANDERSON: No further questions.

MR. FLANNERY: Mr. Seligman,

in your experience, does it take more than one day to receive a letter from Sweden?

A. Yes. *and I am to believe as this letter*

*May 1976* MR. FLANNERY: No further questions.

MR. ANDERSON: Mr. Seligman,

Mr. Flannery has inquired about the time for receiving a letter from Sweden, can you explain why the Swedish letter, Exhibit 101-2, is dated February 18, 1971, while the received stamp appears to show that it was received in the Patent Department on February 19, 1971?

A. I can't say positively, but more than once, on a number of occasions - - -

MR. FLANNERY: Objection, hearsay, opinion.

THE WITNESS: The docket clerk

did not advance the date stamp.

questions.

MR. ANDERSON: No further

*Richard J. Anderson*  
Deponent

THE STATE OF NEW HAMPSHIRE)

COUNTY OF Hillsborough) SS.

Subscribed and sworn to before me this 13th  
day of May 1976.

*Marilyn E. Trapalis*  
Notary Public

Marilyn E. Trapalis  
Notary Public

My Commission Expires March 19, 1980

## EXHIBITS

<u>No.</u>	<u>Page</u>	<u>Description</u>
60	3	Notes-meeting in New York with I. Kahn, TelePrompter Corporation; R. Baer, E. Rubin and L. Etlinger - February 19, 1968, letter from [redacted] to [redacted] associate.
61	10	File history of abandoned patent, Serial No. 697,798.
62	10	File history of Patent No. 3,728,480.
63	38	April 27, 1970, letter from Seligman to Swedish associate.
64	71	Memo from Keiran to Matthews of December 8, 1969, with attached purchase order of November 3, 1967.
65	71	Paper received from Green by Seligman on Space War.
66	73	Tape No. 820.
67	73	Tape No. 890.
68	73	Paper tape.
69	73	Paper tape.
70	73	Paper tape.
71	77	Paper from File D-2401.
72-1 and 72-2	78	Drawing of French patent from File D-2401.

(Continued)



EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description</u>
73	81	June 24, 1970, letter from Seligman to Swedish associate.
74	81	September 12, 1972, letter from Seligman to German associate.
75	83	January 4, 1973, letter from Seligman to German associate.
76	84	July 6, 1973, memo from Seligman to Etlinger.
77	85	January 7, 1974, letter from Seligman to Japanese associate.
78	87	January 8, 1975, letter from Seligman to German associate.
79	107	December 30, 1970, letter from Seligman to English associate.
80	108	Amendment to official action filed December 10, 1971, in Canadian Patent Office.
81	109	December 27, 1971, letter from Seligman to Swedish associate.
82	110	May 31, 1972, letter from Seligman to German associate.
83	111	September 13, 1972, letter from Seligman to Canadian associate.
84	111	October 6, 1972, letter from Seligman to German associate.
85	112	November 2, 1972, letter from Seligman to Swedish associate.

(Continued)

EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description</u>
86	113	April 26, 1973, letter from Seligman to Dutch associate.
87	114	June 1, 1973, letter from Seligman to Australian associate.
88	114	August 21, 1973, letter from Seligman to Argentine associate.
89	115	January 4, 1974, letter from Seligman to Japanese associate.
90	116	February 26, 1974, letter from Seligman to Argentine associate.
91	116	May 21, 1974, letter from Seligman to Mexican associate.
92	117	February 27, 1975, letter from Seligman to Dutch associate.
93	128	June 25, 1972, letter from Seligman to German associate.
94	130	July 5, 1972, letter from Seligman to German associate.
95	131	September 27, 1972, letter from Seligman to Israel associate.
96	131	November 2, 1972, letter from Seligman to Swedish associate.
97	132	January 3, 1973, letter from Seligman to Swedish associate.
98	133	July 12, 1973, letter from Seligman to Dutch associate.

(Continued)

EXHIBITS (Continuation)

<u>No.</u>	<u>Page</u>	<u>Description</u>
99	134	March 26, 1975, letter from Etlinger to Dutch associate.
100	134	May 21, 1975, letter from Seligman to Williams.
101-1	156	January 25, 1971, letter from Seligman to Swedish associate.
101-2	156	February 18, 1971, letter from Swedish associate to Sanders.
101-3 through 101-7	156	Translation of French Patent No. 1,180,470 published June 4, 1959, from Swedish associate.